The Incorporated Accountants' Journal

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The Society of Incorporated Accountants and Auditors

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Letters for the Editors to be forwarded to them, care of the Secretary, as above. Correspondence, copies of reports and accounts, &c., will be welcomed from the profession.

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Contents.

Professional Notes.

WE publish in another part of this issue the speech of the Chancellor of the Exchequer in introducing the Budget, in so far as it relates to new taxation. Apart from the generally anticipated increase of 3d. in the standard rate of income tax, the numerous Budget forecasts have proved to be entirely wrong, the further source of new revenue proposed by the Chancellor being one which was quite unexpected. It is termed "National Defence Contribution," which is in effect a form of excess profits duty. The contribution is payable in respect of the growth of profits of businesses whose profits in any accounting year ending after April 5th, 1937, exceed £2,000, but is not to apply to professions or employments. The tax is to be based on either a profits standard or a capital standard at the option of the taxpayer. How these standards are to be arrived at is not yet quite clear, except that the capital standard is to be a percentage (6 or 8 per cent.) on the cost of the assets of the business subject to suitable adjustments, and the profits standard is to be based on the average profits of the years 1933, 1934 and 1935. Mr. Chamberlain has since indicated that he is prepared to reconsider and modify his proposals respecting both the profits standard and the capital standard in order to meet varying circumstances in different classes of industry.

The examples given in the White Paper issued in connection with the Budget (which are reproduced on another page) are helpful in a general way, but do not give any guidance as to the adjustments to be made in fixing either the profits standard or the capital standard, and upon these much will depend. There is a provision that losses which have been incurred during the last four years, and not yet written off, are to be allowed as a set-off against the assessable profit. In order to avoid what the Chancellor describes as "transition which would be too abrupt," it is proposed to allow a deduction from the profits of a fifth of the amount by which the profits fall short of £12,000. This will be a distinct advantage to small businesses.

There is a feeling that the impact of the tax will be particularly severe upon concerns which are now in the stage of recovery from a long period of depression, as they will have little or no profits standard, and will have to rely on what is considered an inadequate capital standard for such cases, whilst others which have suffered but little from the depression will escape lightly through having a substantial profits standard. But no-one can be certain of the real effect of the tax until more information is forthcoming.

There are two or three minor provisions devised to protect the Revenue against the avoidance of taxation. The first concerns what is known as "bond washing," a term used to describe opera-

tions under which the owner of securities sells them at a price that covers accrued dividend and buys them back again at a lower price after the dividend has been paid. The provisions contained in the Finance Act, 1927, respecting this matter, are apparently not precise enough to prevent a way of escape. Another relates to certain one-man investment companies formed for the purpose of avoiding taxation, the remedy in regard to which it is proposed to make retrospective so as to apply to surtax for the year 1935-36. A further provision is designed to prevent excessive allowances being given to mills and factories in computing profits for Income Tax purposes. It is not intended to take away any legitimate allowances which are granted at present.

Nearly seven years have passed since the last Conference of Incorporated Accountants, which was held at Sheffield. The long interval has been marked by many events of direct interest to Incorporated Accountants, including the International Congress on Accounting held in London in 1933, the Society's Fiftieth Anniversary celebrations in 1935, and two Courses at Cambridge for the junior members of the Society; but special interest attaches to the Conference which has been arranged to be held at Belfast on June 23rd to 26th this year, as it is the first Conference of the Society to be held in Northern Ireland.

The programme of the Conference, which has been circulated to members, is reproduced in another column. Hospitality is being offered by the Incorporated Accountants of Belfast, with the cordial co-operation and support of members from all parts of Ireland. Members attending will have the honour of being entertained by the Prime Minister of Northern Ireland and by the Lord Mayor of Belfast. The business sessions will be held at the Queen's University, and the Vice-Chancellor of the University will take the chair at the opening meeting. It is confidently anticipated that the support of a large number of members will ensure the complete success of the Conference.

By command of His Majesty The King, The Earl Marshal has been directed to invite Mr. Richard Wilson Bartlett (the President of the Society of Incorporated Accountants) to be present at the Abbey Church at Westminster on May 12th at the Coronation of Their Majesties King George VI and Queen Elizabeth.

The question whether a widower is entitled to an allowance in respect of a housekeeper who does not live in his house, but merely attends day by day, has now been decided by Mr. Justice Lawrence in the case of *Brown* v. *Adamson*. The appellant was a widower who, having no relative available, employed a married woman as housekeeper. He claimed that by the wording of sect. 22 of the Finance Act of 1924 it was not necessary for his housekeeper to live in his house, and maintained that residence with him was only necessary if the housekeeper was a relative. It was further argued on his behalf that even if residence were necessary "resident" did not necessarily mean that the female person must live in the house, but that she must be in the house so far as was essential for the carrying out of the duties of housekeeper. In support of this view it was pointed out that sect. 19 (1) (*b*) of Finance Act, 1920, specifically provided that no allowance was to be made where the relative was a married woman whose husband had been allowed relief as a married man in respect of his wife.

His Lordship, in dismissing the appeal, said that the effect of the appellant's contention was to treat "resident" as synonymous with "employed by," and he could not agree that it had that meaning. While this case decides the legal position, we can see no obvious reason from a practical point of view why a distinction should be made between a housekeeper who resides on the premises and one who does not.

It was decided last month by Mr. Justice Bennett in the case of *In re Mortimers (London), Limited*, that when a voluntary liquidation is superseded by a compulsory liquidation the Court is entitled to review the amount of the remuneration previously awarded to the voluntary liquidator. In giving judgment his Lordship said the question whether there was a right to review depended upon Rule 192 of the Companies Winding Up Rules, 1929, which enabled the Court in a compulsory liquidation to fix the remuneration of the liquidator. Although the liquidation started as a members' voluntary winding up under which the remuneration of the liquidator might be fixed by the company in general meeting under sect. 232, on the footing that such remuneration would be paid out of money to which those who voted the remuneration were entitled, this ceased to apply when the compulsory order was made, and Rule 192 then applied—a Rule which had statutory force under sect. 305 of the Act. This was so, he said, whether the liquidation was originally a members' winding-up or a creditors' winding up.

We publish in this issue the judgment of Mr. Justice Clauson in relation to a motion brought

by a shareholder of a company asking for an order that the company should be restrained from paying a dividend on its First Preference shares. The judgment deals with the question of capital and dividends, and embodies a general statement of what Mr. Justice Clauson regards as the law upon the subject. It also contains other points of interest to the accountancy profession.

It seems to be rather dangerous to attempt to recover money by garnishee proceedings on a married woman's banking account. In a recent case in which judgment had been obtained by Harrods Limited against a Mrs. Tester, for goods supplied, it was subsequently found that she had a banking account with a considerable credit balance. Garnishee proceedings were taken and the King's Bench Division upheld the claim, but the Court of Appeal have set aside this judgment, with costs to the appellant, on the ground that the money in the banking account was put there by Mrs. Tester's husband and that there was a resulting trust in his favour. How it is possible for any creditor to ascertain where money comes from that stands to the credit of a married woman's banking account is a difficult problem and, unless she is carrying on business on her own account, it would seem to be both futile and costly to attempt to garnishee her separate banking account.

A somewhat unusual point came before the Court in the case of *H. Palmer* (*Executrix of R. E. Palmer, deceased*) v. *F. J. Cattermole* (*Inspector of Taxes*). Mr. Palmer died in August, 1931, having made no proper returns of his income for several years, and a claim was made against the estate for Income Tax under Schedule "D" for the years 1925-26 to 1931-32 inclusive. These assessments included tax on income of the deceased's wife, who died in 1934, and the claim put forward by the Executrix was that Rule 18 of the General Rules did not extend to the profits or gains which arose or accrued to the wife. The Rule in question states that where any person dies without having delivered a statement of all his profits or gains chargeable to tax, an assessment may be made upon his executors or administrators "in respect of the profits or gains which arose or accrued to him before his death," the amount of the tax to be a debt payable by the estate. The claim of the Executrix was based on the interpretation which the Court of Appeal, in the case of *Leitch* v. *Emmott*, placed on Rule 16—a rule which deals specially with the separate assessment of a married woman.

Mr. Justice Lawrence, in giving judgment in favour of the Crown, said he was unable to accept the view that the wife's profits did not accrue to the husband under Rule 18, because he read the judgment of the Court of Appeal in *Leitch* v. *Emmott* as applying solely to the computation of tax, and in the present case it was not a question of computation, but of assessment and collection. It was argued that the words in Rule 18 "which arose or accrued to him" were inapplicable to the wife, but his Lordship thought there was no reason for not giving these words the liberal interpretation which would result in taxing the estate of the deceased in respect of profits which undoubtedly should have been and were not returned.

A proposal has been made for a change of status of a fixed trust by the conversion of the trust into a joint stock company. The conversion which has been suggested would be carried out by a transfer to the company of the securities at present held by the trustees. The company, would then issue shares to sub-unit holders against the surrender of their sub-units, on the basis of one share for every sub-unit exchanged. The object appears to be to provide against liquidation at the end of the trust period, which in many cases is fixed at twenty years. The advantage claimed is that the directors would be able to eliminate unsatisfactory securities and acquire others that were more suitable as an investment. The principle which the proposal embodies does not seem to have met with much support.

For a great many years the Trust and Agency Company of Australasia has been paying interest on sums received in advance of calls on its ordinary shares without deducting Income Tax. The shares are of the nominal value of £10 each, with £1 paid, and large sums have been received by the company from time to time in advance of calls. The bargain in the first place was to pay 6 per cent. interest and subsequently to pay 4 per cent., and then 3 per cent. free of Income Tax. In giving judgment, Mr. Justice Simonds said the case fell into two parts. Under the bargain to pay 6 per cent. interest there was no provision in the Articles to pay such a sum as, after deduction of Income Tax, would leave 6 per cent. interest on the capital advanced. The payment of the full 6 per cent. was accordingly a mistaken practice.

As regards the later circulars issued by the company offering to pay interest of 4 per cent.

and 3 per cent. free of tax, it was quite clear to his Lordship that that offer did not mean that the company was to pay such a sum as after deduction of tax would give a specified rate of interest. He accordingly held that the payments were illegal, and granted a declaration that the company was bound to deduct tax from interest payable on all sums received in advance of calls, and that any agreements to the contrary between the company and the holders of the shares were illegal and void.

A summons which came before Mr. Justice Simonds in the Chancery Division raised the question as to whether Miss Dorothy Frere, a creditor for a gaming debt, was entitled to rank in a deceased's estate. The debt, which amounted to about £800, was a sum claimed to have been advanced to the deceased to enable her to discharge gambling debts incurred at a Bridge Club, of which Miss Frere was the proprietress. After payment of debts, funeral and testamentary expenses and legacies, there was left in the estate of the deceased a sum of £730 in respect of which there was no residuary gift. By sect. 1 of the Gaming Act, 1892 :—

> "Any promise, express or implied, to pay any person any sum of money paid by him under or in respect of any contract or agreement rendered null and void by the Gaming Act, 1845 . . . shall be null and void, and no action shall be brought or maintained to recover any such sum of money."

The contracts or agreements referred to in the Gaming Act, 1845, are wagering and gambling contracts, and his Lordship accordingly held that Miss Frere could not rank for the £800. A claim that there was additional consideration of another character was also rejected.

Speaking at a dinner of the Insurance Institute of London, the Lord Mayor said he thought it would be in the best interests of the country if the Exchequer would allow insurance to cover death duties, such insurance not to be added to the value of the estate for death duty purposes. The advantage to the country would be that death duties would be promptly paid and the slaughter of the estate obviated. He was aware that a similar proposal had already been rejected by the Government, and hoped that the Insurance Institute might be able to do something to change the minds of the Government officials. Mr. Croom-Johnson, K.C., M.P., who also spoke on the same occasion, expressed the hope that insurance men would keep pressing for the reform because he was satisfied that the suggestion had much to recommend it.

RESEARCH.

By C. HEWETSON NELSON, F.S.A.A.

IN considering the work which lies before the Research Committee recently established by the Council, one cannot help but believe that, under the able chairmanship of Mr. R. A. Witty, extremely valuable work will be achieved.

It will be remembered that the impetus in this direction was voiced in a thought-provoking paper submitted by Sir Josiah Stamp at the Incorporated Accountants' Conference in 1921, in the course of which he said: "I make this serious indictment of accountants. Scientific accountancy has now been developing for some fifty years, but I cannot trace that it has yet made a single substantial contribution to economic science over its own field of the analysis of the results of industry, although it has practically a monopoly grip of the required data. I am not referring so much to costing details, which are hardly uniform yet, as to the ordinary trading results, balance sheets and their details." Towards the close of the paper the lecturer added: "I hope that out of the rising generation of accountants there will be at least 1 per cent. who have the real itch for knowledge, and whom the microbe of curiosity will give no rest. If this small number are the ones who conceive the ideas, formulate the plans, and act as the general dynamic, and then we have another 5 per cent. to 10 per cent. who are willing to give some time to following the lead of these pioneers by answering questions and, so to speak, doing as they are told, you will have a body of workers who will achieve all that I have in mind. Joined up in local study circles or in correspondence, groups of enthusiasts willing to give a little of their leisure time to the quest of truth and the advance of knowledge, would in the space of ten years raise the economics of business almost to the status of an exact science."

A very remarkable discussion followed the paper, in which illuminating speeches were made by Mr. Arthur Collins, the late Mr. J. M. Fells, the late Colonel Grimwood, and the late Mr. Pitt. It is certainly encouraging to know that, although one of the critics in the course of that discussion appeared to look upon Sir Josiah's paper as "almost impertinent," the Society sixteen years after the paper was submitted has approached with determination the very task to which they were challenged then. In this connection the Research Committee might very well commence by a study of "The Science of Social Adjustment," recently issued by MacMillan & Co.

and containing, *inter alia*, Sir Josiah's presidential address to the British Association 1936, but more particularly of interest to the Research Committee of the Society will be Chapter 4 entitled "Some Projects of Research," and perhaps also Chapter 3 on the "Calculus of Plenty." In Chapter 3 some very severe comments appear on technocracy and potential plenty showing how greatly the technocrats had overstated their case, *e.g.*, pig iron showed a thirty-fold overstatement, while in other commodities the variation was much greater.

The intimate connection between population and production, invention and the economic machine are amply illustrated, while the question of gluts, overproduction and destruction furnishes illustrations of many striking and indeed alarming tendencies, *e.g.*, the burning of spices in a fertile season by the Dutch when production was beyond anticipated disposal, the destruction of coffee by Brazil when between 1931 and 1934 some twenty-seven million bags, equal to nearly two years' requirements, were destroyed, obviously with the object of raising prices. The subject of wheat also receives consideration.

In dealing with research problems, immense significance is attached to the question of population and the economic results which are likely to occur in the next quarter of a century, and the appointment of a Royal Commission is advocated in view of "the certain decline of population compared with the steady increase of the past, the change in age grouping, and the greater rapidity of change."

A section of Chapter 4 includes accountancy in relation to obsolescence and costing, in which emphasis is laid on the present basis for the provision of depreciation which is critically examined. Later the author writes illuminatingly on taxation adjustments, and advocates a change by which the Inland Revenue are to abandon the view of the "annual" character of the tax "appropriate in 1878," and recognise the tax as continuous.

"At first," says Sir Josiah, "the Revenue would be giving larger allowances, and as the total plant in use was increasing, its total allowance would always be in advance of that given on present practice, but *in the long run* the aggregate allowances for industry would not exceed those at present given, for they must be equal to the *total annual replacement of machinery*, and would equate this figure whether a hundred years' or one year's life were computed."

This statement from so eminent an authority might well be developed by the Society's Research Committee.

PROXIES FOR USE AT CLASS MEETINGS.

NOT so very long ago, in the case of *re Dorman Long & Co.*, the Court was called upon for the first time to define the proxy rights of persons entitled to attend and vote at a class meeting held under sect. 153 of the Companies Act, 1929.

The Dorman Long company intended to acquire the business of the South Durham Steel and Iron Company by making use of the machinery provided by sects. 153 and 154 of the Companies Act. Two schemes were prepared, one between the Dorman Long company and its debentureholders and shareholders, and the other between the South Durham Company and its debentureholders and shareholders; and application was made to the Court under sect. 153 for leave to summon separate meetings of those concerned. The leave was given on terms that notices of the meetings should be sent by letter accompanied by forms of proxy settled in chambers. These forms were filled in as to the name of the appointee, the appointor having merely to state whether he wished the proxy to be used "for" or "against" the proposed scheme.

With the notices was sent a note stating that all proxies were to be lodged at the registered office of the company four days before the date of the meeting, and when the meeting was subsequently held the chairman rejected proxies which had not been lodged in accordance with this direction.

The schemes proposed did not meet with the approval of many of those concerned, and one of the shareholders of the Durham company despatched at his own expense circulars inciting his fellow members to vote against the scheme. With these circulars he sent forms of proxy which were not in the form settled in chambers on the motion for leave to summon the meetings. A number of these proxies were completed, but the chairman of the meeting at which they were supposed to be used rejected them on the ground that they were not in the settled form.

By rejecting these proxies and those which had not been lodged at the registered office of the company four days before the date of the meeting, the directors obtained the assent at each meeting of a majority in number and three-fourths in value of those present and voting personally or by proxy; but when application was made to the Court for confirmation of the schemes, the granting of the order asked for was opposed on the grounds (*inter alia*) that the rejected proxies should have been admitted.

On the particular points with which we are

immediately concerned, the Court gave the following rulings :

(*a*) that sect. 153 gives to each person entitled to attend the meetings held under the section a general right to vote by proxy ;

(*b*) that although the form of proxy to be sent out with notice of the meetings may be settled by the Court, each person entitled to attend the meetings may employ any proper form of proxy he thinks fit ;

(*c*) that the section does not allow the directors to require proxies to be lodged with the company before the meetings ;

(*d*) that directors who receive proxies for use at the meetings must use them " for " or " against " the scheme in accordance with the instructions given by the donors.

In the circumstances, therefore, the rejected proxies should have been admitted at the meetings, and the assents required by sect. 153 had not in fact been obtained.

Proxies for use in class meetings summoned under sect. 153 were again the subject of the Court's consideration in the more recent case of *re Waxed Papers Limited.*

In this case the form of proxy sent out with the notices empowered the appointee to " consider, and, if thought fit, approve, with or without modification, the proposed scheme of arrangement referred to in the notice convening the meeting, and at such meeting or at any adjournment thereof to vote for or against the said scheme either with or without modification as my proxy may approve."

At the meeting, before the resolution for the approval of the scheme was put, a resolution was moved that consideration of the proposed scheme be deferred until the result of the year's trading could be laid before the members. This resolution was accepted on a show of hands, but when a poll was taken it was defeated, the chairman making use of proxies for this purpose.

The legality of this use of the proxies was challenged, but the Court held that the form of proxy employed did not restrict the appointee to voting for or against the scheme proposed. It was wide enough to enable the appointee to vote on any incidental matter arising at the meeting before the main question before the meeting was discussed.

It is perhaps a little rash to assume that in every case directors to whom proxies are given may use them to vote against a motion for deferring the consideration of the scheme ; but where the form of proxy is similar to that employed in the *Waxed Papers* case, the precedent may be of value.

FRAUD ON MINORITIES.

THE cardinal principle that the votes of a majority will bind the whole corporation, *i.e.*, the principle of the supremacy of the majority, was clearly enunciated in *North-West Transportation Company* v. *Beatty* (1887), that unless some provision to the contrary is to be found in the Articles, the resolution of a majority of the shareholders duly convened, upon any question with which the company is legally competent to deal, is binding on the minority and consequently upon the company, and every shareholder has a perfect right to vote upon any such question, although he may have a personal interest in the subject-matter opposed to or different from the general or particular interests of the company.

This doctrine is subject to certain limitations and qualifications. A very common limitation is the requirement of a majority of three-fourths of those who, entitled to vote, do vote, in person or by proxy, by sect. 117 of the Act of 1929 which has reference to extraordinary and special resolutions. As a rule, important changes in the constitution or regulations of a company require a special resolution, so that, with the exception of ordinary business of a company, a bare majority is insufficient. The Memorandum and Articles commonly give the directors certain powers, *e.g.*, the management of the business and the control of the company, and unless there is express provision to the contrary, a majority of the shareholders present at an ordinary general meeting cannot exercise any direct control over the directors while they act within their powers. The directors are not entitled to use their power of issuing shares merely for the purpose of retaining control over the affairs of the company or defeating the wishes of the existing majority of the shareholders. Hence the majority is supreme, and the Court, with some exceptions, will respect any decision it has arrived at and will, on occasion, assist it to enforce its decisions on a recalcitrant minority.

The Court will not, however, interfere with the internal management of companies acting within their powers, and in fact has no jurisdiction to do so. Again, it is clear law that in order to redress a wrong done to a company or to recover moneys or damages alleged to be due to a company, the action should *prima facie* be brought by the company itself. But an exception is made to the second rule, where the persons against whom the relief is sought themselves hold and control the majority of

the shares in the company, and will not permit an action to be brought in the name of the company. In that case the Courts allow the shareholders complaining to bring an action in their own names. This, however, is mere matter of procedure in order to give a remedy for a wrong which would otherwise escape redress, and it is obvious that in such an action the plaintiffs cannot have a larger right to relief than the company itself would have if it were plaintiff, and cannot complain of acts which are valid if done with the approval of the majority of the shareholders, or are capable of being confirmed by the majority.

The cases in which the minority can maintain such an action are, therefore, confined to those in which the acts complained of are of a fraudulent character or beyond the powers of the company. A familiar example is where the majority are endeavouring directly or indirectly to appropriate to themselves money, property or advantages which belong to the company, or in which the other shareholders are entitled to participate. No mere informality or irregularity which can be remedied by the majority will entitle the minority to sue, if the act when done regularly would be within the powers of the company and the intention of the majority of the shareholders is clear.

In *Cook* v. *Deeks* (1916), three directors of a company carrying on the business of railway construction contractors obtained a contract in their own names to the exclusion of the company. The contract was obtained under circumstances which amounted to a breach of trust by the directors and constituted them trustees of its benefits on behalf of the company. By their votes as holders of three-fourths of the issued shares they subsequently passed a resolution at a general meeting of the shareholders declaring that the company had no interest in the contract. It was held that the benefit of the contract belonged in equity to the company, and the directors could not validly use their voting power to vest it in themselves.

In *North-West Transportation Company* v. *Beatty* (1887) a voidable contract, fair in its terms and within the powers of the company, had been entered into by its directors with one of their number as sole vendor. It was held that such vendor was entitled to exercise his voting power as a shareholder in general meeting to ratify such contract; his doing so could not be deemed oppressive by reason of his individually possessing a majority of votes, acquired in a manner authorised by the constitution of the company. In *Foster* v. *Foster* (1916), Mr. Justice Peterson said that in some cases the majority had been engaged in appropriating to themselves that which ought to be shared between themselves and the minority, but he was not aware of any case in which it had been suggested that, if the majority thought that one of themselves was the best person to be managing director and proceeded to appoint that person managing director at a remuneration, they appropriated to themselves the assets of the company. The company was in such a case obtaining the services for which it was paying, thus getting a *quid pro quo*, and there was no foundation for the suggestion that in such a case there was an appropriation of property in which the minority were interested for the benefit of the majority.

The law was recently reviewed in the Scottish Courts in *Harris* v. *Harris* (1936), which reaffirmed that the Court will not interfere with the decisions of a majority of shareholders unless they are fraudulent in character or *ultra vires* of the company.

In these cases the minority received no consideration for the expropriation of their property, the transactions were unilateral, and there was no *quid pro quo*. The test to be applied is not whether the acts complained of are fraudulent in character, but whether they constitute a breach of the fiduciary duty owed to the company by the directors. The protection of the minority where the acts of the majority appear to be valid lies in the fact that it is open to the Court to infer fraud where the disputed acts of the directors are such that no reasonable man could consider them to be for the benefit of the company.

THE NEW GERMAN COMPANY LAW.

Under date April 15th *Der Wirtschaftstreuchänder*, Leipsig, has issued a Special Number on the new German Company Law. The various aspects of the new law are discussed in separate articles, of which the following is a list:

Old and New Company Law. By Dr. Kiesow, Senate President at the Imperial Court, Leipzig.

The Form of Accounts under the New Company Law. Ascertainment of the Annual Result and Profit Distribution. By Dr. C. Zimmermann, Lawyer and Wirtschaftsprüfer, Berlin.

The Business Report. By Dr. H. Adler, Lawyer, Berlin.

Balance Sheet Valuation and Structure. By Wirtschaftsprüfer Dipl.-Kfm. Dr. C. Wirtz, Berlin.

The Structure of the Profit and Loss Account. By Wirtschaftsprüfer Dr. H. Horn, Frankfurt am Main.

Audit and Publication of the Annual Results under the New Company Law. By Dr. P. Buchholz, Berlin, Manager of the Institut der Wirtschaftsprüfer.

Raising Capital and Capital Reduction under the New Company Law. By Wirtschaftsprüfer Dr. W. Minz, Cologne.

Amalgamation and Conversion under the New Company Law. By Wirtschaftsprüfer Lawyer W. Düring, Berlin.

INCORPORATED ACCOUNTANTS' CONFERENCE AT BELFAST.

PROGRAMME.

At the invitation of the President and Committee of the Belfast and District Society a Conference of Incorporated Accountants will be held in Belfast on Wednesday, Thursday, Friday and Saturday, June 23rd, 24th, 25th and 26th. The following programme has been arranged :—

Members are requested to invite guests (both ladies and gentlemen) to the dinner and to all the meetings and social functions of the Conference. Names of guests should be precisely indicated on the application.

WEDNESDAY, JUNE 23rd, 1937.

(1) MORNING. 11 a.m. to 12 noon. At the Queen's University.

(*Special omnibuses will leave the Grand Central Hotel for the Queen's University at* 10.30 *a.m.*)

The Vice-Chancellor of the University, Mr. F. W. Ogilvie, M.A., will take the chair, and the Right Hon. the Lord Mayor of Belfast, Sir Crawford McCullagh, Bart., D.L., J.P., will formally open the Conference. (*Special omnibuses will leave the Queen's University for the Grand Central Hotel at* 12.15 *p.m.*)

(2) MID-DAY. 1 p.m. Luncheon at the Grand Central Hotel, by invitation of the Incorporated Accountants' Belfast and District Society. Chairman : Mr. J. S. White, F.S.A.A.

(3) EVENING. 8.30 p.m. Civic Reception by kind invitation of the Right Hon. the Lord Mayor and the Lady Mayoress (Sir Crawford McCullagh, Bart., D.L., J.P., and Lady McCullagh, C.B.E.), at the City Hall. Dancing.

THURSDAY, JUNE 24th, 1937.

(4) MORNING. 10.15 a.m. to 12.30 p.m. At the Queen's University.

(*Special omnibuses will leave the Grand Central Hotel for the Queen's University at* 9.50 *a.m.*)

(*a*) Address by the President of the Society of Incorporated Accountants and Auditors.

(*b*) Paper by Mr. D. Tilfourd Boyd, B.Com.Sc., F.S.A.A., on "Accountancy in relation to Irish Industry and Commerce," followed by a discussion.

(*Special omnibuses will leave the Queen's University at* 12.30 *p.m., arriving at the Grand Central Hotel at* 12.45 *p.m.*)

(5) MID-DAY. 1 p.m. to 2.15 p.m. Luncheon at the Grand Central Hotel, by invitation of the Society of Incorporated Accountants in Ireland. Chairman : Mr. A. H. Walkey, F.S.A.A., President of the Irish Branch.

(6) AFTERNOON. 2.30 p.m. to 5 p.m.

(*a*) Tour of inspection of Belfast Harbour, by kind invitation of the Belfast Harbour Commissioners, on the tender *Duchess of Abercorn*. Afternoon tea.

(*Special omnibuses will leave the Grand Central Hotel at* 2.30 *p.m., and the tender will leave Queen's Bridge Jetty at* 2.45 *p.m.*)

Or

(*b*) Visit to Hazelwood. Afternoon tea. Hazelwood is a natural mountain park offering panoramic views over County Antrim and County Down.

(*Special omnibuses will leave the Grand Central Hotel at* 2.30 *p.m.*)

(7) EVENING. Dinner of the Society of Incorporated Accountants and Auditors at the Plaza, Chichester Street, Belfast.

7 p.m. Reception by the President of the Society of Incorporated Accountants and Auditors.

7.30 p.m. The President will take the chair. The Right Hon. Viscount Craigavon, D.L., M.P., Prime Minister of Northern Ireland, the Viscountess Craigavon, and the Right Hon. the Lord Mayor and the Lady Mayoress will be present.

FRIDAY, JUNE 25th, 1937.

(8) MORNING. 10.15 a.m. to 12.15 p.m. At the Queen's University.

(*Special omnibuses will leave the Grand Central Hotel for the Queen's University at* 9.50 *a.m.*)

Paper by Mr. Fred Woolley, J.P., F.S.A.A., Southampton, member of the Council, on "The Structure of Limited Liability Companies," followed by a discussion.

(9) AFTERNOON. 3.15 p.m. Garden party at Parliament Buildings, Stormont, by kind invitation of the Right Hon. the Prime Minister and the Government of Northern Ireland.

(*Special omnibuses will leave the Grand Central Hotel for Stormont at* 2.45 *p.m., and will leave Stormont at* 5.30 *p.m.*)

(10) EVENING. 8.15 p.m. Reception and dance at the Grand Central Hotel, by invitation of the members of the Belfast and District Society. The President of the Belfast and District Society, Mr. J. S. White, and Mrs. White will receive members and guests at 8.15 p.m. Dancing until midnight.

SATURDAY, JUNE 26th, 1937.

(11) VISIT TO GIANT'S CAUSEWAY AND PORTRUSH. 9.15 a.m. Motor coaches will leave Grand Central Hotel for a tour of the Antrim Coast. Route will be *via* Larne, Garron Tower, Cushendall, Ballycastle, to the Giant's Causeway, returning *via* Portrush.

10.30 a.m. Morning coffee at Garron Tower.

1.30 p.m. to 3.30 p.m. Lunch at Giant's Causeway.

5 p.m. to 6 p.m. Afternoon tea at Northern Counties Hotel, Portrush.

6 p.m. Leave Northern Counties Hotel, Portrush, for Belfast.

8 p.m. Arrive Grand Central Hotel, Belfast.

Members who desire to proceed direct to Portrush for golf, tennis or bowls will travel by train leaving York Street Station at 9.20 a.m., arriving in Portrush at 11 a.m., and meet the main party for afternoon tea at the Northern Counties Hotel at 5 p.m.

Note.—Members travelling from England and Wales will be furnished with vouchers to enable them to obtain fares at special rates. A number of tentative reservations of steamer accommodation have been made. It is essential that reference should be made to the Incorporated Accountants' Conference when berths are booked.

Society of Incorporated Accountants and Auditors.

Deputy Secretary.

The Council of the Society of Incorporated Accountants and Auditors has appointed Mr. L. T. Little, B.Sc. Economics (Honours), as Deputy Secretary of the Society.

Correspondence.

To the Editors, *Incorporated Accountants' Journal.*

Shakespeare and Accountancy.

SIRS,—With reference to Mr. Horrocks' letter on page 220 of the March number of the *Journal*, I feel sure that in addition to his knowledge of accounts as therein mentioned, Shakespeare appears to have had a pretty fair knowledge of auditors, or at least those who were not members of recognised professional bodies! He writes in *I, King Henry IV*, Act II, Scene 1:—

"Good morrow, Master Gadshill. It holds current that I told you yesternight: There's a franklin in the wild of Kent, hath brought three hundred marks with him in gold: I heard him tell it to one of his company last night at supper; a kind of auditor; one that hath abundance of charge, too, God knows what."

It would be interesting to know if in his day there was any tariff of fees for auditors.—Yours faithfully,

JOHN H. WILLIAMS, F.C.A.

Calgary, Canada, April, 1937.

Prize for Book-keeping and Accountancy.

A prize of ten guineas is given annually by the Society of Incorporated Accountants and Auditors in connection with the Higher Grade examination in Book-keeping and Accountancy held by the London Chamber of Commerce. The prize for 1936 has been awarded to Mr. H. H. Malpass, of the Royal Army Pay Corps Costing School, Aldershot.

CAPITAL AND DIVIDENDS.

Brown *v.* Gaumont British Picture Corporation, Limited.

The following is the judgment of Mr. Justice Clauson in the Chancery Court in relation to a Motion to restrain payment of dividend.

Mr. Justice CLAUSON: This is a motion by a shareholder of a company known as Gaumont British Picture Corporation, Limited, suing on behalf of himself and all other the shareholders in that company, and asking for an order that the defendant company and their directors may be restrained pending the trial of this action from paying in respect of the financial year ending March 31st, 1937, a dividend on its 5½ per cent. cumulative first preference shares of £1 each. The company's financial year ends on March 31st, 1937, but its obligation according to the terms of issue of the preference shares is, I think I am right in saying, to pay the dividend half-yearly on September 30th and March 31st. The September 30th dividend, 1936, again I think I am right in saying, has been paid, and what is really in issue now is whether the plaintiff is entitled to stop the company from paying the dividend which, according to the terms of issue, would normally be paid on the preference shares on March 31st, 1937. The financial year of the company ends on March 31st, as I have already stated.

It is a company of, I think I may properly say, vast extent. Of course it has debenture issues and so forth; its gross assets are somewhere—it is not worth pausing to find an accurate figure—between £12,000,000 and £16,000,000 or £17,000,000. It conducts an enormous business through a number of subsidiaries, and if the expression will not be misunderstood, sub-subsidiaries, amounting in number, I think I am right in saying, to about 50 different companies. It is a business of wide extent geographically; it is a business of a very complicated character. The business is, of course, conducted in a number of different departments, and it appears that during the period which has elapsed since the end of the last financial year, namely, during the period between March 31st, 1936, and March 31st, 1937, very large losses have had to be faced in respect of difficulties in regard to certain branches of the business which are resulting in the directors accepting the policy of, to some extent, shutting down particular departments of the business, and transferring the activities theretofore carried on in those departments to other places. I am necessarily and deliberately stating the matter in somewhat general and vague terms.

Now in a company of this character, of course, it is never possible to get an accurate view of the company's financial position until the audited balance sheet is produced, which must necessarily in the case of a company of this type and character be several months at least after the end of the financial year, but equally in order that a business of these dimensions and this character should be satisfactorily and economically conducted, it is most important—and it would be affectation to pretend that even a Judge does not know—that you should have elaborate accounting departments which keep a hand upon the whole matter month by month and even week by week, so that from time to time, so far as revenue items are concerned, the directors with the assistance of their very skilled staffs are able to form a fairly accurate view of what is happening, and how far profit is being made from time to time, and as to what the likelihood is that when the particular period of accounting comes to an end it will be found that there will be a profit or a loss, and if

a loss how much loss—that is as regards what one may call the ordinary trading and revenue activities of the company. There is, of course, one item which is always uncertain with the assets of these vast dimensions and of this complicated character, for holdings in subordinate and sub-subordinate companies naturally result in a number of elements of uncertainty being introduced into the value of particular assets, particular possessions, if I might so call them, and accordingly throughout the financial year there is necessarily a good deal of doubt as to the actual financial position of the company in the sense of the position which it would occupy if it were necessary at a particular date to ascertain with accuracy what was the value of all its various assets and interests necessary for the purpose of the balance sheet at the end of a financial year. Some sort of endeavour has to be made to get into figures a representation of the company's financial position. We are all familiar with the way in which that is done, practically the only way in which it can be done. You have certain book values which have been arrived at by means, in some cases of valuation, in some cases with reference to cost; those are to some extent modified year by year when the balance sheet is brought out in order to make a truer picture. The modification sometimes takes the form of writing an asset down, or in some cases up; it sometimes takes the form of putting on the other side of the balance sheet some account of some kind as a reserve against what is believed or thought possibly to be a depreciation or an alteration in the value of the asset, and of course under modern circumstances, in concerns of this magnitude, it is impossible to do the thing in any other way. It is quite impossible when you have £12,000,000 or £14,000,000 worth of assets to value every time you have a balance sheet; it would be quite absurd.

THE ACCOUNTS.

Now when the accounts for the year ending March 31st, 1936, were brought before the shareholders, which was in the late autumn of the year 1936, it would appear—I know nothing of the details, nor am I concerned to know them—that questions were raised, and as a result of those questions a document was produced which has played a very large part in the proceedings during the last two or three days before me, which has been spoken of as the combined balance sheet. I have referred to the very complicated nature of the company's business, and the combined balance sheet is an attempt to produce a statement of the financial position of the whole concern, using that word in the widest sense, eliminating as far as possible the artificial circumstances arising from the existence of subsidiary and sub-subsidiary companies. The difficulties, of course, of preparing any such document are great. Properties, of course, can be valued, and the large mass of the properties concerned in this group in fact were valued by valuers of great experience, who produced a valuation which everybody has assumed, and necessarily assumed for any purpose that is before me now at all events, to be as accurate a valuation as in the circumstances is possible. All sorts of adjustments necessarily have to be made. In the case of some of the subsidiary companies the share capital is not entirely owned by the parent company, and adjustment has to be made from that point of view. I need not go into a number of other adjustments that have to be made, but I have no doubt that, with the very skilled accountants concerned in the matter, this combined balance sheet has produced something which gives a not unfair picture of the total financial position of the combined concern, and I am concerned with the matter at the moment for this purpose only, that a study of that combined balance sheet in the light of the evidence which was given before me leads me to this conclusion, about which I think there is not really very much doubt, that, turning back for a moment to the balance sheet of the defendant company as at March 31st, 1936, items of assets appearing in that balance sheet must almost necessarily be treated, in view of the result shown by the combined balance sheet and of the valuations which have been made, to be to some extent entered at figures which are in excess of the value now to be attributed to them were they corrected in the light of the information which has been gathered by the valuation which I have mentioned, and the purview which has been put before the company of the whole position as shown in the combined balance sheet.

I have referred to the fact that during the last year there have been losses. The amount of those losses is necessarily a matter of estimation, to some extent of fairly close estimation, and to some extent the estimation is difficult. I may put the matter in this way with reference to a document which again has played a very large part in the proceedings before me. I may put the matter in this way with reference to that document, that the activities of the defendant corporation in departments other than those in which these losses have been incurred have resulted in this, that there has been a sufficient profit made after making all necessary adjustments and after looking after such items as income tax, debenture stock interest, debenture stock sinking fund and so forth, and after making allowance for the sum required to meet the preference share dividends there is left over a sum of, roughly, £15,000. Now the year began with a balance on profit and loss account of £147,000. At the beginning of the year also there was a further £200,000 of profit balance. The profit balance really was £347,021, but as stated in the report of the board, the board thought it proper to set £200,000 aside, which means this, that they said: we will treat ourselves as starting the year with a credit balance to profit and loss of £147,000. We must not act on the footing that the £200,000 was normally an available credit balance, because we think it is prudent to keep that by, because it may be wanted in view of alterations in value of our shares and other contingencies.

Now I have spoken for the moment of the departments of the business which have been successful. I now turn to the departments of the business in which this serious loss has been incurred. The loss is very large. We are dealing with large figures and operations on a large scale, and when the motion started some material was put before the Court, but very insufficient material, as to what the loss was and as to what provision could be made for the loss, but now at long last, after careful cross-examination of several witnesses, the position as regards the loss is, within certain limits, fairly clear, and the position is this, that there is a figure, which will have to be treated when the accounts are finally made up to March 31st, 1937, of loss of these losing departments which is at present, of course, a matter of estimate, and it may, of course, be affected by a number of adjustments which may have to be made, which are proper to be made, which auditors might insist on having made, but to such a figure which must amount to something like £780,000.

It is suggested on behalf of the plaintiff that there is material before me that ought to lead me to suppose that the figure cannot be less than another £30,000 or so in excess of that £780,000. I am not at all satisfied that that would be the right view. I think that I am probably reasonably safe in holding that I have material before me on this motion to lead me to believe that there is a loss of about £780,000, but I should not be justified in holding that there is any greater loss than that. As I

say, the whole matter is estimate, and estimates are naturally misleading, but it is to be remembered that the nature of this proceeding is this, that the plaintiff has said: if you the company pay this preference dividend, you are going to do something which is illegal, contrary to law—in a sense which I will develop later; but a man who comes before the Court and sets up a case of that kind must, of course, give some reasonably satisfactory evidence that there is this illegality occurring, and accordingly I am not entitled, as against the defendants, to treat anything as established which I do not think is on the whole—having regard, of course, to the fact that this is an interlocutory application—proved, but on the whole I am satisfied it is in accordance with what will turn out ultimately on further investigation to be the facts. I hope I have thus sufficiently explained why I do not see my way to hold that the loss which is to be provided for in order that this preference dividend may be satisfactorily paid amounts to more than £780,000.

Now what the directors of the company say about the matter is this, and I can put it in a nutshell having regard to the late hour which we have now reached. They say: true it is we have to face the loss of £780,000, but that can be done when the accounts are finally made up, and at the end of the year it will turn out that we have in the company assets available to meet that loss, or, to put it slightly differently, although we have lost £780,000 and our assets accordingly have diminished to that extent, it will be found that, even after making allowance for that diminution, there are still assets in the company representing partly the proceeds of the subscription for share capital, and partly certain sums which from time to time have been set apart in a way which I will refer to in a moment, which will be left intact and available for future purposes of the company after meeting that £780,000 loss. Now those assets which will be left after that £780,000 loss has been met seem to me to amount to this: they will be assets which will be sufficient to meet that loss.

THE SUGGESTED ILLEGALITY.

I think at this point it would be well that I should explain exactly what it is suggested is the illegality which will be committed if the preference dividend is paid. It is well settled, and I do not propose to refer to any authority to establish the proposition, that dividends such as these must not be paid out of capital in this sense, that the company must not, under the guise of paying dividends, return to the shareholders any part of the money subscribed on their shares. The plaintiff can succeed in this case only, as I understand the position, if he can satisfy me that should the preference dividend be paid the result will have been that in that payment to the preference shareholders is an ingredient of payment which is a return to them of the capital subscribed on their shares. That brings us to this point: where am I to find the capital which was subscribed upon the shares of the company, so that I may be quite sure that this payment of dividend can be made without trenching upon that capital so subscribed?

THE COMPANY'S ASSETS.

Now I return to the assets of the company. So far as the balance sheet of March 31st, 1936, is concerned there was said to be at that time a balance carried to reserve of £500,000. It appeared on the face of it to be invested, as it has been called, in the assets of the company. Now that £500,000 arose in this way: at various stages in the history of the company shares were issued at a premium, sometimes a simple issue of shares at a premium, and sometimes the matter was a good deal complicated by shares being issued at a premium against shares in subsidiary companies and so forth, but those are all matters the details of which it is impossible for me to pursue. Shares having been issued at a premium, the premium was from time to time carried to reserve, and that £500,000 was built up in part from sums so carried to that account, being premiums on the issue of shares, and partly out of revenue balances which from time to time it was thought convenient to carry to that reserve by way of increasing the figure. Now this seems quite clear upon the figures, that if in fact on March 31st, 1936, it was true that after all the liabilities of the company had been met there remained in the coffers of the company assets sufficient to meet the total figure of the subscribed capital and also this £500,000, and if this proposed dividend could be paid by trenching upon that £500,000, or even totally dissipating it, but without trenching upon that part of the assets which extended to and represented in full the subscribed capital, the plaintiff could have no cause for complaint.

I will just mention parenthetically one point. It was suggested that owing to the existence of an Article, Article 130, referring to the reserve fund, it would not be possible or it would not be in accordance with the Articles of the company to utilise the presence of such a fund as that to justify the payment of the dividend without the sanction of a general meeting of the company. I do not take that view. I do not propose to pursue the matter at length. It is sufficient for me to say this, that it seems plain to me on the construction of the Article that, without going to a general meeting at all, it would be quite within the sphere of the directors to deal with their accounts in the way of writing off that fund against items of depreciation and other similar items, items in other words of proper debit to revenue account. I propose to say nothing more about it. There is the further point, which I do not propose to labour, that after all this is necessarily only an interim dividend, and it is by no means certain in any view of the matter that Article 130, whatever its construction may be, has any application to the matter in hand. I do not propose to deal with that further.

Now to return to the figures. There is the loss as I have said of £780,000, and I am not prepared to treat it as any greater loss than that. What have the directors got to meet the £780,000? They have got the £15,000 from other departments—an estimate, of course, but there it is—they have got the £147,000 and the £200,000 with which they began the year; that makes a total of £362,000. That leaves them short to the extent of £418,000. If that £500,000 is £500,000 it is quite obvious that they can pay the dividend and meet all the charges without trenching upon the other part of the assets which represents not the £500,000, but the subscribed capital.

I have referred to the combined balance sheet and I have referred to this fact, that on the evidence before me I am tempted to think that it is true that if the figures of the 1936 balance sheet were now corrected so as to conform to the true values of all the assets as at that date it is, I think, almost certainly true to say that the subscribed capital plus the £500,000 would not be covered in full by the value of the assets. To what extent those sums would be uncovered is a matter of conjecture. I am tempted to think that that figure might possibly be as much as about one-sixth of the deficiency; it may be more; it may, on the other hand, be less. The factors which have to be taken into account in correcting the figures are so complicated that it is quite impossible on such materials as I have before me to do more than attain some approximate view of the probabilities of the matter.

Now I think it is agreed that if the proper writing down

would have such a result as I have indicated, the result would be this, that what is left of the £500,000, after the writing down, would cover the sum required to meet the deficiency that I have mentioned. I do not think myself there would be very much margin, but there again I am not prepared to say. There may be more margin than I think. It is just possible that there might not be enough, and that the result might be that some part of this dividend might be thrown on subscribed capital. I think it is not impossible; I do not think it is likely. It is quite impossible for me to hold that it has been proved, and I am clear that it has not been proved that that would be the result.

It will be noticed, however, in what I have said, that I have assumed that if the assets as at March 31st, 1936, are insufficient on a proper value to cover both the subscribed capital and the £500,000 reserve, the deficiency may be thrown proportionately on the subscribed capital and the reserve; in other words, I have assumed that the assets ought to be properly treated as notionally divisible into two parts, those which represent subscribed capital, and those which represent reserve, and that if there has been a diminution in value, the diminution in value must be dealt with proportionately between those two portions of the assets. I myself do not see any other way of dealing with the matter, and that that is the right way to deal with the matter is at all events suggested, if not decided, by the well known decision of the Court of Appeal in *Hoare's* case which has been cited to me.

THE LAW ON THE SUBJECT.

Of course, if the law is that when capital has once been subscribed upon the shares of the company, the company must at all costs keep the capital so subscribed intact, and not treat anything as available to pay a dividend except that which remains after the whole amount of the subscribed capital has been treated as replaced in full, the position would be different, and should the assets be found to be insufficient to meet both reserve and subscribed capital, the reserve would have to suffer first. If that were the way the matter had to be dealt with, it may well be that on the figures that I have got here the reserve would have to be treated as diminished to such a sum that there would not be enough to enable this dividend to be paid otherwise than out of capital, but as the law now stands, and as far as this Court is concerned (there can be no doubt about it, I think, at all), the law is different, and although it is true that, as soon as you identify which proportion of the company's assets represents the subscribed capital or what remains of it, you must not trench upon that to pay it, so long as you do not trench upon that you may trench as much as you choose upon the remaining assets of the company which represent not the subscribed capital or what is left of it, but other funds provided from some other source to which the disabilities do not apply which attach to the subscribed capital.

THE RESERVE FUND.

That brings me, I think, to what is the last point I need deal with this afternoon. As I have stated, the reserve fund was built up to some extent, to a great extent, out of premiums on shares, and it was suggested that there is some special feature about the money which has been obtained by way of premium upon the issue of shares, and there is some principle which prevents that money being dealt with as available to pay a dividend. I am not aware of any such principle, nor can I see any ground upon which such principle could be established. Of course, I can well appreciate that there may be circumstances under which moneys which have been obtained on the issue of shares at a premium such as this, that the premium obtained be set aside in some particular fund, and that that particular fund may have disappeared in some way, and it may afterwards be said that premium has disappeared; it is no longer available. I can understand that, but when the premium has once become a part of the general assets of the company I do not see what justification the Court would have for treating those particular assets as on a different footing from any other assets, or as treating a reserve formed by setting aside such premiums as on any footing different from that of any reserve set aside out of what one may call normal profits. This is undoubtedly true, that subject always to the question of whether there may be something in the Articles of Association that interferes with it, there is nothing legally wrong in a company dividing among its shareholders a premium obtained on the issue of shares so long as the sum it pays out does not form part of the capital subscribed upon the shares, but the premium, of course, is something additional to the capital subscribed upon the shares.

From what I have said hitherto it will, I think, be clear that I do not see my way to grant the injunction for which the plaintiff asks. The story is really a very simply one. The plaintiff has taken upon himself a burden, which with a company of this kind I should have thought it would almost inevitably be quite impossible to discharge. He has taken the burden of establishing at a date when the subject-matter with which he has to deal must necessarily lie in estimate, that some estimate which he brings forward is more accurate than some estimate upon which the directors have made up their minds after careful consideration to act, and anyway, whether that was too bold an undertaking or not, I am satisfied on the facts of this particular case that he has failed entirely to establish that by the payment of the dividend which is proposed to be paid the directors will in fact unlawfully trench upon that which they must not trench upon, that is so much of the assets of the company as properly represent the capital paid up upon the shares. The result is that I must refuse the motion.

The Incorporated Accountants' Golfing Society.

SPRING MEETING.

The Spring meeting of the Society will be held on the West Hill Golf Course on Thursday, May 6th, 1937.

The West Hill Golf Club is at Brookwood, Surrey, and a private path leads from the railway station to the course.

Play will commence at 10 a.m.

In the morning the Society's Challenge Cup will be competed for over 18 holes on handicap, and the same card will be taken as the first round of the Nicholson Trophy.

There will be an optional sweep of 2s. 6d., and score cards must be returned by 2.30 p.m.

A four-ball bogey competition will be played in the afternoon.

A prize has kindly been presented by Sir Thomas Keens for the morning competition. Other prizes will be presented by the Society.

Members are requested to intimate not later than May 1st if they will take part in the competition. Guests may be invited.

THE BUDGET.

THE CHANCELLOR'S SPEECH.

Below is the text of Mr. Chamberlain's speech in introducing the Budget so far as it relates to matters which are of more particular interest to the accountancy profession. In the first part of his speech the Chancellor stated that the realised Budget deficit was £5,597,000, but after allowing for a sum of £13,127,000 applied to debt redemption, the true surplus of current revenue over current ordinary expenditure was £7,530,000. After explaining the position with regard to the Post Office and the Road Fund, Mr. Chamberlain continued :—

I am now in a position to summarise the expenditure for 1937-38, including the £10,000,000 for Supplementary Estimates, the Civil Votes, and omitting the self-balancing items :

Fixed Debt charge	£224,000,000
Other Consolidated Fund Charges	11,500,000
Supply Services	627,348,000
Total	£862,848,000

Revenue 1937-38 on Existing Basis.

Now I turn to consideration of the revenue that I may expect to get on the existing basis. I begin with Customs and Excise. I anticipate that the economic conditions which gave me such a favourable result last year will continue during this year and will be further reinforced by the festivities connected with the Coronation. Moreover, I must take into account the fact that the Beef and Veal Duties, which were in force only four months last year, will now be running for a full year and should give me £2,500,000 more than they did last year. In those circumstances I think I am justified in expecting another substantial expansion of revenue from Customs and Excise. I am budgeting for an increase of over £12,000,000 on the receipts of last year. I am assuming an increase on nearly all the main heads. The most important are : from spirits, over £800,000 ; from beer, tobacco and oil, nearly £2,500,000 each ; from the 1932 Tariff Duties, rather more than £2,000,000. Tea will be an exception. I must allow rather less for tea because of the forestalments which I have already mentioned, which had the effect of increasing last year's revenue at the expense of this year's. The full details will be found in the White Paper which will be available when I sit down.

The total for Customs and Excise on the existing basis is £333,000,000. Under Inland Revenue I expect also an appreciable increase in Income Tax and Surtax. Last year Income Tax gave me £257,250,000, but with the growth of profits for 1936, which forms the basis for the assessment of income tax in 1937, there should be a considerable advance in the revenue of this year, and I am estimating it at £275,000,000. Surtax in 1936 gave £53,500,000, which was less than I expected. There, again, there should be a recovery this year, and I put the figure at £58,000,000. From Death Duties I estimate that I shall receive £89,000,000, and I put Stamp Duties at the same figure that I got last year, namely, £29,000,000. Adding, therefore, £1,500,000 for the remaining sources of revenue, I get a total for all Inland Revenue Duties of £452,500,000. Coming to other revenue, I estimate that I shall receive from Motor Vehicle Duties £34,000,000, which compares with receipts last year of £32,727,000, the Exchequer share being £5,300,000 and the Road Fund the rest.

I put Crown lands at the same figure as last year, £1,350,000. His Majesty, in the Gracious Message that was read on March 16th, followed the example of his predecessor in placing these revenues at the disposal of the House of Commons, and it is, therefore, proper to take account of them now, although there has not yet been time to complete the arrangements by the grant of a Civil List. Sundry Loans, at £4,300,000, will be slightly less than last year, and Miscellaneous Revenue, at £11,000,000, is less than that of last year by £13,600,000. Hon. Members are aware that in recent years Miscellaneous Revenue has been swollen by non-recurrent receipts, and it is always an item which is subject to considerable fluctuation. This year the fluctuations all seem to have gone the same way, but the largest single item is the disappearance of that £5,250,000 which was so generously contributed by the Road Fund to the general revenue last year. I thought last year that I might have been in a position now to propose a revision of the present contribution from the Post Office, which has been fixed for four years at £10,750,000, but after consultation with my right hon. Friend the Postmaster-General we both agreed that the proper thing to do is to maintain the same figure for another three years. Post Office Net Receipt, which is based on that contribution but is subject to adjustments mainly arising out of services between Departments, is taken at £11,800,000. I can now summarise the revenue from all sources, excluding the self-balancing items, as follow :

Customs and Excise, £333,000,000.
Inland Revenue, £452,500,000.
Other items, £62,450,000.
Total, £847,950,000.

The expenditure I have already given—£862,848,000. I am, therefore, left with a prospective deficit to cover of £14,898,000.

I daresay the Committee will be anxious to hear what methods I have in mind for dealing with this deficit but, before I come to that there are certain minor matters which, although they will not materially alter the situation that I have depicted, nevertheless must be mentioned in my statement. I hope, therefore, that the Committee will give me their indulgence for a few moments while I run through them. I think I should warn the Committee not to draw any premature conclusions from the amount of the deficit that I mentioned.

Measures Against Taxation Avoidance.

It will be within the recollection of hon. Members that a considerable proportion of last year's Finance Bill was occupied by measures devised to protect the Revenue against the avoidance of taxation. I have

two further proposals to make this year for the same purpose. The first one concerns the operation which is, no doubt, well known to most hon. Members under the term "bondwashing." This particular kind of washing is a term used to describe operations under which the owner of securities sells them at a price that covers accrued dividend and buys them back again, after the dividend has been paid, at a lower price. The result of these transactions, which are technically of a capital character, is to deprive the Exchequer of a tax which otherwise it would have received if the owner had retained the securities and drawn the dividends upon them. I am sure the Committee will agree with me that it is not right that people should be allowed to evade the incidence of the income tax, and I am glad to be able to say that my proposals have the support of the representative bodies in the financial world, to whom I wish now to express my thanks for their assistance in co-operating with me in framing these provisions. It is extremely difficult to estimate the gain that I shall receive from the abolition of "bondwashing," but I put it at not less than £150,000 in the current year, and at £1,000,000 in the year after and succeeding years.

My second proposal is intended to strengthen certain provisions with regard to tax avoidance in the last Finance Act. It may be recollected that on the Report stage of the Bill, when I made a concession about a provision which was retrospective in character, I gave what I described at the time as a fair warning that similar latitude should not be expected in the future and that, if people persisted in devising these ingenious contrivances for defeating the intentions of the Legislature, they must not expect that they would escape retrospective legislation. In some quarters that warning was disregarded, and no sooner was the Finance Act upon the Statute Book than some highly artificial arrangements for circumventing its provisions were adopted in connection with particular kinds of one-man companies known as investment companies. I propose to take power to defeat that evasion. In order to enforce my warning of last year I propose to make the remedies effective for purposes of surtax for the year 1935-36. As this is a proposal for protecting the existing basis of taxation, the fruits of this are included in my estimate for surtax.

There are one or two other proposals affecting Inland Revenue which will have to be dealt with in the Finance Bill. One of them, requiring a resolution, is intended to prevent excessive allowances being given in respect of mills and factories in computing trading profits for assessment to income tax. Another will continue for five years the increased allowance for repairs from Schedule A assessments in arriving at the net assessment on which the owner pays the tax. In this case, as it is a relieving provision, no Resolution will be required.

Hop Duty.

The £4 a cwt. duty upon imported hops has been in existence since the wartime hop control ended in 1925. It expires in August next. It has had a very valuable effect. It stabilised the home market, and I do not think it has done any harm to any of the interests concerned, and, in consultation with my right hon. Friend the Minister of Agriculture, I propose to renew it for another four years, subject in all respects to the same conditions as before.

Canadian Trade Agreement.

Then I shall have to ask for legislative authority for certain points which arise out of the recent Trade Agreement with Canada, and I shall have to introduce resolutions applying the Ottawa Agreements Act to the new agreements, reducing the preferential duties on certain silk stockings of Empire production and abolishing the preferential duties on certain musical instruments known, I believe, as reed organs, also of Empire origin.

I believe the Committee has heard of the Medicine Stamp Duties and knows that the report of a Select Committee on that subject has been made public. I have had a good many representations from various quarters since its publication, and I am having the recommendations of the Committee examined in the light of those representations. But, in view of the very complex issues involved and the existing strain upon the time of Parliament, I am not proposing to introduce legislation on this subject in the Finance Bill this year.

There is another minor proposal which is designed to secure that motor vehicles on which a container or other similar device is superimposed, shall be taken as though the weight of the vehicle for taxation purposes, in appropriate circumstances, included the weight of the container.

Finally, I would recall a statement by my right hon. Friend the Minister of Health on February 24th last, when he informed the House that the Government had decided to meet views which have often been expressed here and to abolish the Male Servants Licence Duty. A Clause in the Finance Bill will give effect to that proposal as from January 1st next.

Major Taxation Proposals.

Now I have disposed of all the minor items in the Finance Bill with which I need trouble the Committee, and I can return to my deficit. I must say that last year when I had to impose fresh taxation to the tune of £15,000,000, almost exactly the same sum as is found in the deficit with which I am confronted to-day, I did expect and hope that I should be spared the unwelcomed task of having to impose new burdens on the taxpayer in 1937. The fact that I have to make fresh calls now, in spite of the relief which is afforded to the Budget by the Defence Loans Act, is really the measure of the amount by which we have been able to accelerate our defence programme. I cannot help thinking that the taxpayer, although he may groan and grumble at the fresh demands which are being made upon him, will find some consolation in the thought that his additional contributions represent an ever quickening approach to the goal of safety.

However distressing the need for new taxation may be, I cannot think it has come altogether as a surprise to the country. I am confirmed in that view by the unusually large number of suggestions which have been offered to me by correspondents with a view to assisting me to find new and hitherto untapped

sources of revenue. I have had some of these suggestions collated and arranged in alphabetical order, for convenience, and I think the Committee might like to hear some of them in order that they may judge of the embarrassing opulence of the choice put before me. It has been suggested to me that I should tax or put increased taxes upon :

Advertisements, Antiques and Automatic slot machines.
Bachelors, Bookmakers, Bicycles and Beer.
Cats, Cosmetics and Co-ops.
Dogs and Debutantes.
Fiction and Friendly Societies.
Loud speakers and Lotteries.
Newspapers and Newsvendors.
Speculators and Spelter.
Tips—also described as " gratuitous livelihoods "—and Tricycles.
Wages and Whisky.

I am sure the Committee must admire the variety and ingenuity of these suggestions, but a very careful examination of the letters in which they have been embodied has revealed that there is one feature common to them all. They are all directed to practices and indulgences which are not shared in by their authors. To adopt a well known couplet, they seek to

" Compound for things they are inclined to
By damning those they have no mind to."

But the Chancellor of the Exchequer cannot employ a criterion of that kind. He has to consider, first, the amount of revenue which any particular tax is capable of producing. He has to set against that the cost of its collection, and although he can never leave out of his account the social, moral or economic effects of any proposal which he may make, he cannot allow personal taste and personal prejudices to govern his procedure. Therefore, while I am most grateful to all my correspondents for putting their ideas before me, after carefully considering them and applying to them the tests which experience has shown to be necessary, I am reluctantly obliged to say that none of them is of any use to me, and I shall have to look elsewhere for my missing revenue.

Income Tax.

There is one source of revenue to which all Chancellors look in time of trouble and which has never yet failed them. I refer to the income tax. I have observed that at least two ex-Chancellors of the Exchequer have publicly expressed the view that an increase in income tax is justified and is to be expected. They have gone further, and they have agreed, I am sure without any collusion, that the proper extent to which income tax should be increased is to be found by rounding up the present uneven figure of 4s. 9d. in the £ to the more convenient figure of 5s. I cannot resist such overwhelming authority, and I propose to adopt the proposition of my right hon. Friends the Members for Epping (Mr. Churchill) and Hillhead (Sir R. Horne). The 3d. increase in income tax will give me £15,000,000 in a full year and £13,000,000 in the current year. The gap which I now have to fill has been reduced to the trifling figure of £1,748,000.

Before I come to deal with it, I want to put certain considerations to the Committee which may give it a somewhat different aspect. Under the Defence Loans Act the Government were authorised to borrow up to a maximum of £400,000,000 spread over a period not exceeding five years. That is to say, assuming that the period remains unchanged and that the borrowing powers are exercised to the fullest extent, an average of £80,000,000 a year. But in the Statement relating to Defence Expenditure, which was issued last February, it was clearly laid down that although it was not yet possible to determine which year would see the peak, the level of defence expenditure was likely, over the next two or three years, to be very much heavier than in the present year. That being so, it would be natural to expect that the curve of borrowing, even allowing for expansion of revenue, should to some extent follow the curve of expenditure, beginning well below the average and rising to a peak and falling thereafter. Therefore, it was a matter of very considerable surprise to me that the revelation, when the Defence Estimates for this year were published, that I proposed appropriations-in-aid which required borrowing in the first year up to the full amount of the average excited no comment of any kind, and the acutest minds in this House and out of it thereby missed the clue to the proposal which I am about to put before the Committee—a proposal which in fact determined the amount which it is necessary for me to borrow during the current year.

On this occasion I have thought it necessary to take a somewhat longer view than is generally required in examining the contents of a normal Budget. Hon. Members no doubt have in mind all the qualifications and the reserves which we have felt obliged to make in attempting to describe or to define a Defence programme which must continually be subject to variations in scope and in time, in one direction or in another, according as conditions change, but, broadly speaking, we know that we have got to prepare ourselves for expenditure of a very special and exceptional character, which will rapidly increase, and then later fall until it reaches its new level. Under those circumstances it seemed to me that if the Chancellor of the Exchequer in each year had to impose a succession of new taxes, hitting first in one direction and then in another, that would be a course of proceeding which would be likely to cause the maximum amount of uncertainty and disturbance, and I sought, therefore, for the means of providing at least a major part of the expenditure that would be required by some device capable of growth in itself, but easily adjustable, so as to allow for variations in the yield of revenue from existing taxation.

Where could I find such a source of revenue, bearing in mind all the differing circumstances of the variously occupied men and women who make up the population of this country ? I have already increased the income tax, and this year the increase is not accompanied by those changes in the allowances which last year and the year before did so much to help the possessors of small incomes subject to the tax. I might, of course, increase indirect taxation, but the prices in the shops, which particularly affect wage

earners, the lower grades of clerical workers, and the smaller rentiers whose incomes are largely derived from fixed interest-bearing securities—those prices already show a tendency to rise, and I did not want to do anything to push them any higher. But, Sir, nobody who reads the papers carefully, and especially who pays attention to the reports of trading concerns, can fail to be struck by the almost monotonous story repeated in their annual reports of increased business, record turnovers, and larger profits. I suspect that on the whole those profits still fall far short of the level of 1928 or 1929, but, on the other hand, there is no indication that they have yet reached their peak, and I myself anticipate that they will continue for some time to come to expand. I give every credit to the leaders of industry for the ability and energy with which they are conducting their business, and to the trade unions and the workers generally for the way in which they have co-operated in expanding production, but I think everybody will admit that the Government have played a large part in the revival by creating the conditions under which this great activity has become possible, and in so far as it is consequent upon orders placed by the Government it arises directly from the expenditure of the State.

National Defence Contribution.

In those circumstances it does not seem to me to be unreasonable to ask that this growth in business profits should be made the occasion of some special and temporary contribution on the part of those concerns which have benefited, towards the cost of National Defence. Accordingly, I am going to propose the imposition of a tax upon such growth, which, in order to emphasise its purpose, I call the National Defence Contribution. I propose that the National Defence Contribution shall be payable in respect of the growth of profit by all persons engaged in industries, trade or business of any kind whose profits, in any accounting year ended after April 5th, 1937, exceed £2,000. That, of course, lets out small concerns whose profits are at a low level. The charge will be in respect of the growth of profit only, and therefore if there is no growth of profit there will be no charge. It will not be applicable to professions and employments, for although those who are engaged in employments or in professions will no doubt benefit by the general improvement, I do not consider that circumstances would warrant their inclusion in this charge; and indeed the particular proposal which I have to make could not be appropriately applied to them.

In order to measure the growth of profit, some standard must be taken. I am proposing that there should be two alternative standards, the choice being the choice of the taxpayer. Either it will be the actual profits of certain specified years, which I call the profits standard, or it will be a percentage on the capital employed in the business, which I call the capital standard. Where the profit standard is adopted, it will be the average profits of the years 1933, 1934 and 1935, and the charge therefore will be on the amount of the increase of profits shown in the accounting period over the average of those three years. Where the capital standard is adopted the capital will be calculated at the cost of the assets in the business, subject to suitable adjustments, and upon that capital I propose that, in the case of a company, 6 per cent., and in the case of individuals or firms, 8 per cent. shall be taken as the base which forms the capital standard. Therefore, where the taxpayer chooses the capital standard, the charge will be on the amount by which the profit in the accounting year exceeds 6 or 8 per cent., as the case may be, upon the capital employed.

Now I come to the rate of contribution, and I think that sound principle requires that a special and temporary tax of this character should be related, not only to the growth of profits, but also to the absolute prosperity of the firm. You may have a considerable growth of profit without there being, accompanying it, a prosperity on the part of the firm, or you may have a firm which is very prosperous but whose profits have only increased by a small amount. I have in mind, therefore, that the rate of charge is to be increased as the prosperity advances. In order to carry out this plan it will be necessary in each case to ascertain what is the capital of the concern, whether the profits standard or the capital standard be adopted, because the only way of measuring the absolute prosperity will be by determining the rate of yield on the capital that is represented by the actual profits. The first step, therefore, will be to calculate out the profits, expressed as percentage upon capital, and that percentage will determine the charge upon the growth.

I have said that the rate will advance with prosperity, and for the purpose of graduating the charge I am proposing to divide the return on capital into four regions—up to 6 per cent., between 6 and 10 per cent., between 10 and 15 per cent., and over 15 per cent.—and the rate of the charge applicable to the increase of profits will depend upon the region or regions occupied by the increase. For instance, if the capital standard is adopted, the increase, if small, will lie wholly in the region between 6 and 10 per cent. As the profit grows, it may cover successively higher regions until it reaches the top, and the part which lies in each region will be charged at the rate which is appropriate to that region. Where the profits standard is adopted, the principle will be the same, but the increase will start from a higher level, because the taxpayer will always choose the profits standard in preference to the capital standard if the profits standard is higher than 6 per cent. of the capital. The actual rates of charge will be: Up to 6 per cent., nothing; between 6 and 10 per cent., one-fifth of the growth; between 10 and 15 per cent., one-quarter of the growth; and over 15 per cent., one-third of the growth.

Mr. Pethick-Lawrence: Which part?

Mr. Chamberlain: That part which is over 15 per cent. is charged according to the region it applies to. Now I candidly say that I can hardly expect hon. Members to grasp at the first hearing and in full all the implications of the system which I have been endeavouring to describe. I spent considerable time in trying to frame words which would exhibit at once a simple and an accurate description of this system of graduation, and I am afraid I may have had very

little success. [Hon. Members: "No."] In practice I do not think that this plan will be found at all difficult, but in order to elucidate it further I have had a number of illustrations worked out, and they will be found in the White Paper. I should add that where in one accounting period the profit falls below the standard, that deficiency will be available for set-off against the profit in excess of the standard in other periods. But there is one particular class of case which I think deserves special mention, because it differs materially from the normal. I refer to the struggling concern which has had a series of losses in the past and which is only just beginning to make a profit. Of course, in that case the standard of growth of profit will be reckoned not by reference to the losses which have been made before, but by reference to the capital employed in the business.

But I want to go a little bit further in meeting a case of that kind, and I am proposing, therefore, that the losses which have been incurred during the last four years, in so far as they have not yet been written off, shall be carried forward and set off against the profits chargeable against that year. I have already said that the contribution will only be payable if profits exceed £2,000 in all, but if the full charge were made directly the profits exceeded that figure the transition would be too abrupt and accordingly I have included a device for tapering off this exemption, under which a deduction will be allowed from profits of a fifth of the amount by which the profits fall short of £12,000. The effect of that is this: where the profits are £2,000 they are exempt, where they are £3,000 a deduction of £1,800 will be made from the profit. When they reach £4,000 the deduction will be £1,600, and so it goes on, the deduction diminishing until at £12,000 profit it disappears altogether.

The Committee will desire to know when this new proposal is intended to operate. It would, of course, be possible to fix a single date and say that the accounting period should begin then; but, of course, different concerns have different accounting periods ending at different times of the year, and I think it will be much more convenient to allow the first assessment to be made for that accounting period in each case which first ends after April 5th of this year. That means, of course, that the accounting periods fall on different dates according to the practice of the firms. For example, if a firm is in the habit of making up its accounts to, say, the end of June, the first accounting period will end on June 30th next. If, on the other hand, it has been in the habit of making up its accounts to March 31st, which comes before April 5th, the first accounting period will end on March 31st, 1938.

Of course, the corollary to that is this, that when the National Defence contribution comes to an end, provision will have to be made, so that every concern has been subject to the contribution for exactly the same period of time. When it is remembered that most firms make up their accounts to the end of December, that no assessment can be made until after those accounts are completed, and that the tax in all cases will only be payable two months after the assessment has been made, it will be seen that I can expect but very little revenue from the National Defence contribution this year. I should not like to put it higher than £2,000,000. But next year there should be a yield of the important order of £20,000,000 to £25,000,000. Thereafter, the yield will depend on the general prosperity of the country as shown by the excess of profits over the basic return on capital. Thus, Sir, the National Defence contribution will fulfil my requirement of a new sort of revenue, which will be sufficient this year to bridge the very narrow gap, and will grow next year to such an extent as, with the expansion of revenue from existing taxes, will serve to meet the country's needs. Beyond that I will not at the moment look.

Mr. Lambert: For what period is this tax to continue?

Mr. Chamberlain: It is not for me to say now, but I should say for so long as it is required. I impress upon the Committee that I regard it as a temporary tax, and as the process of rearmament cannot proceed for any indefinite time, it is perfectly clear that the purpose for which the tax is being imposed will come to an end at some time, and I should imagine that the tax would then come to an end. I should like to add that I believe that I have in this new impost created a flexible instrument, which should be easily adjustable to changing conditions with the least amount of disturbance of confidence and stability. The Resolution which covers it will necessarily be drawn in wide terms, but the provisions for the exemption of small concerns and the other adjustments will appear in the Clauses of the Finance Bill.

Estimated Surplus.

I am now in a position to strike my final balance. I put the revenue on this basis at £847,950,000. The addition to the standard rate of income tax, the new National Defence contribution and the gain from bondwashing I estimate to bring in £15,150,000. My total estimated revenue is thus £863,100,000. The total estimated expenditure is £862,848,000, leaving me with a prospective surplus of £252,000.

I have now completed the sixth financial statement that I have been privileged to make to this Committee. I am well aware that that period of office has been exceeded by several of my predecessors. I believe that the record is held by Mr. Pitt who was Chancellor of the Exchequer for nineteen years, over seventeen of which were consecutive. But, Sir, since his day, the mortality rate among Ministers has risen considerably, and I have to recognise that I have already held this office for an unusually long period. It would be presumptuous in me to expect that I could retain it for many more years. It is, therefore, an appropriate moment to make a very brief examination of the future prospects.

The recurrent theme of my statement to-day has been the pressure of rearmament. Perhaps it is not altogether surprising that some Jeremiahs have expressed doubts as to our ability to carry this vast burden without wilting under the strain. But my first reflection upon that subject is that at least the strain has fallen upon us at a time when our credit is exceptionally high and our revenue is expanding.

How much more serious would our condition have been if this great imposition had fallen upon us at a time when our Budget position was at its worst, or if we had weakened our credit and depleted our resources by issuing great loans, or by incurring heavy deficits, in an effort to make our Budget policy serve as an instrument for stimulating economic activity during the time of depression. As it is, we start with a favourable wind, and if there are storms ahead at least there is no visible sign of them as yet.

Revenue Expansion.

But the most important factor in forming a judgment as to whether we can carry this enormous increase in our expenditure without a weakening of our finances or of our credit, lies in the possibility of an expansion of the revenue, and if we are to estimate those possibilities, surely we must bear in mind one very important circumstance, and that is, that owing to the fact that income tax is related to the conditions in the year preceding the year of assessment, and that surtax is concerned mainly with conditions two years before the year of collection, there must always be a lag in the revenue recovery behind the business recovery. Suppose you take the taxes and the rate of taxes in 1929 as a basis. In that year those taxes produced £677,000,000. They began to fall the year after, and continued their downward path until the year 1933, when they touched the bottom figure of £575,000,000. But the tide had already turned by that time. The worst of the depression was over some time before 1933, and even in 1936 the yield of these same taxes, at the same rates, probably fell short by something approaching £100,000,000 of what they would have reached by the natural growth arising out of the increase of the adult population by that time. I consider that it is a fair conclusion to be derived from these considerations that we have still before us a considerable period when we may count on an expansion of revenue. When I take into account that the new sources of income which have been tapped since 1929 brought us in last year an addition of something like £130,000,000, and I add to that the new springs that have been opened up to-day, I cannot feel any apprehension of the possible failure of revenue.

Only two contingencies might disappoint the expectations thus aroused. One would be some great world disturbance outside our control which, sooner or later, might involve us in its vortex. The whole aim of His Majesty's Government is to use all their power and all their influence to avoid such a disaster. The other danger that might arise would be from a too reckless expenditure upon objects that were not vitally necessary. That can be avoided by wise and prudent administration. My hope is that the general prosperity, upon which, after all, the fate of every Budget depends, will pursue an orderly and regulated progress, so much to be preferred to violent advances which are often followed by violent collapses. It may well be that the proposals which I have made to-day will exercise a steadying influence in that direction. I have endeavoured to avoid, on the one hand, the tremendous increase in taxation which would have been required if we had attempted to defray without borrowing the full cost of rearmament, because I was convinced that the shock of such a sudden and such a tremendous increase of our burden would have checked, perhaps even reversed, the process of convalescence. On the other hand, I have increased taxation with a careful choice of method to such an extent as in my judgment will exercise a decided check upon any development of speculation or of feverish activity, without destroying or seriously impairing the present upward trend of national welfare.

NATIONAL DEFENCE CONTRIBUTION.

The following explanations and examples are extracted from the White Paper issued in connection with the Budget :—

The Graduation of the National Defence Contribution.

The chargeable growth of profit will be determined by deducting from the current profit (less any abatement or deduction for losses) either the capital standard (for companies 6 per cent., and for individuals and firms 8 per cent. on the capital employed in the business) or the profits standard (the average profits of the three years 1933, 1934 and 1935).

Where the current profits are less than £12,000 there is to be allowed an abatement therefrom of one-fifth of the amount by which the profits fall short of £12,000. Where the four years before the first accounting period showed a net loss the amount of the loss will be allowed as a deduction from the profits of the accounting period.

The graduation of the rate of charge is determined by reference to the percentage return on the capital employed in the business which the current profits (less any abatement or deduction for losses) represent, and the following table shows the rate of charge in the case of companies :—

Companies.	*Rate of charge on chargeable growth.*
1. Where the current profit does not exceed 6 per cent. on capital	Nil.
2. Where the current profit exceeds 6 per cent. on capital, but does not exceed 10 per cent. on capital—	
Upon the growth	One-fifth.
3. Where the current profit exceeds 10 per cent. on capital, but does not exceed 15 per cent. on capital—	
(*a*) if the standard represents a percentage return of less than 10 per cent.—	
Upon the amount by which 10 per cent. exceeds the standard ..	One-fifth.
Upon the remainder of the growth	One-quarter.
(*b*) if the standard represents a percentage return on capital of over 10 per cent.—	
Upon the growth	One-quarter.
4. Where the current profit exceeds 15 per cent. on capital—	
(*a*) if the standard represents a return on capital of less than 10 per cent.—	
Upon the amount by which 10 per cent. exceeds the standard ..	One-fifth.
Upon that amount of the growth equivalant to 5 per cent. on capital	One-quarter.
Upon the remainder of the growth	One-third.
(*b*) if the standard represents a return on capital greater than 10 per cent., but less than 15 per cent.—	
Upon the amount by which 15 per cent. exceeds the standard ..	One-quarter.

Upon the remainder of the growth	One-third.
(*c*) if the standard represents a return on capital of over 15 per cent.—	
Upon the whole growth	One-third.

Individuals and Firms.

In the case of Individuals and Firms all the percentages in the above table are to be increased by two, to reflect the fact that individuals and firms are based upon 8 per cent. return on capital as against the 6 per cent. for companies. The points of graduation are therefore 8, 12 and 17 per cent.

Examples.

COMPANIES.

The following examples illustrate for Companies how the charge is computed—

A.—*Case where Capital is large and taxpayer elects to be charged on capital standard.*

Capital	£1,000,000	
6 per cent. thereon	60,000	
10 per cent. thereon	100,000	
15 per cent. thereon	150,000	
Profits of accounting period		£160,000
Capital Standard at 6 per cent.		£60,000
Chargeable growth of profit		£100,000

This growth of profit will be chargeable as follows :—

(1) 10 per cent. on capital ..	£100,000		
less Standard ..	£60,000		
		£40,000 at one-fifth =	£8,000
(2) 15 per cent. on capital ..	£150,000		
less 10 per cent. on capital ..	£100,000		
		£50,000 at one-quarter =	£12,500
(3) Total profits ..	£160,000		
less 15 per cent. on capital ..	£150,000		
		£10,000 at one-third =	£3,333
	£100,000		£23,833

Contribution payable = £23,833.

B.—*Case where capital is large and taxpayer elects to be charged on Profits Standard, illustrated for three different profits standards.*

For each case the capital is ..	£1,000,000
6 per cent. thereon	60,000
10 per cent. thereon	100,000
15 per cent. thereon	150,000

(i) Profits Standard £80,000 : Profits of accounting period £180,000—

Chargeable growth of profits £100,000.

This growth of profit will be chargeable as follows :—

(1) 10 per cent. on capital ..	£100,000		
less standard ..	£80,000		
		£20,000 at one-fifth =	£4,000
(2) 15 per cent. on capital ..	£150,000		
less 10 per cent. on capital ..	£100,000		
		£50,000 at one-quarter =	£12,500
(3) Total Profits ..	£180,000		
less 15 per cent. on capital ..	£150,000		
		£30,000 at one-third =	£10,000
	£100,000		£26,500

Contribution payable = £26,500.

(ii) Profits Standard £120,000 : Profits of accounting period £160,000—

Chargeable growth of profits £40,000

This growth of profit will be chargeable as follows—

(1) As the Profits standard is in excess of 10 per cent. on the capital, no part of the growth of profit will be charged at the rate of one-fifth.

(2) 15 per cent. on capital ..	£150,000		
less standard ..	£120,000		
		£30,000 at one-quarter =	£7,500
(3) Total profits ..	£160,000		
less 15 per cent. on capital ..	£150,000		
		£10,000 at one-third =	£3,333
	£40,000		£10,833

Contribution payable = £10,833.

(iii) Profits Standard £240,000 : Profits of accounting period £360,000—

Chargeable growth of profits £120,000

(1) As the profits standard is in excess of 15 per cent. on the capital, no part of the growth of profit is chargeable at the rates of one-fifth or one-quarter.

(2) The whole growth is chargeable at one-third—

£120,000 at one-third = £40,000.
Contribution payable = £40,000.

C.—Cases illustrating the relief given by abatement to small concerns.

In each case the capital is	£20,000	
6 per cent. thereon	1,200	
10 per cent. thereon	2,000	
15 per cent. thereon	3,000	

The taxpayer has elected to be charged on Profits Standard which is assumed to be £1,400.

Case I.—Where profits in accounting period are £3,000.

Profits of accounting period		£3,000
less abatement, one-fifth of (£12,000 less £3,000)		1,800
Adjusted profits		1,200
less standard		1,400
Chargeable growth		Nil.

Case II.—Where profits in accounting period are £5,000.

Profits of accounting period		£5,000
less abatement, one-fifth of (£12,000 less £5,000)		1,400
Adjusted profits		3,600
less standard		1,400
Chargeable growth		£2,200

This growth of profit will be chargeable as follows :—

(1) 10 per cent. on capital ..	£2,000		
less standard ..	£1,400		
		£600 at one-fifth =	£120
(2) 15 per cent. on capital ..	£3,000		
less 10 per cent. on capital ..	£2,000		
		£1,000 at one-quarter =	£250

(3) Adjusted profits	£3,600		
less 15 per cent. on capital ..	£3,000		
		£600 at one-third =	£200
	£2,200		£570

Contribution payable = £570.

D.—*Case illustrating deduction in respect of net aggregate loss for the four years preceding the first accounting period.*

Capital	£1,000,000
6 per cent. thereon	60,000
10 per cent. thereon	100,000
15 per cent. thereon	150,000

The taxpayer has elected to be charged on the Capital Standard.

Profits of accounting period	£400,000
less set-off of loss of preceding four years	200,000
Adjusted profit	200,000
less standard (capital standard) ..	60,000
Chargeable growth	£140,000

This growth of profit will be chargeable as follows :—

(1) 10 per cent. on capital ..	£100,000		
less standard ..	£60,000		
		£40,000 at one-fifth =	£8,000
(2) 15 per cent. on capital ..	£150,000		
less 10 per cent. on capital ..	£100,000		
		£50,000 at one-quarter =	£12,500
(3) Adjusted profits	£200,000		
less 15 per cent. on capital ..	£150,000		
		£50,000 at one-third =	£16,666
	£140,000		£37,166

Contribution payable = £37,166.

INDIVIDUALS AND FIRMS.

In the case of Individuals and Firms the computation proceeds similarly but the points of graduation will be 8, 12 and 17 per cent. The following is an example of the computation of the charge for an individual or firm which would benefit from the abatement.

E.—*Case illustrating the effect of the higher percentages on Capital Standard allowed for individuals and firms and the relief given by abatement to small concerns.*

Capital	£20,000
8 per cent. thereon	1,600
12 per cent. thereon	2,400
17 per cent. thereon	3,400

The taxpayer has elected to be charged on the Profits Standard, which in this case is £1,700.

Profits of accounting period	£5,000
less abatement one-fifth of (£12,000 less £5,000)	1,400
Adjusted profit	3,600
less Standard	1,700
Chargeable growth of profit	£1,900

This growth of profit will be chargeable as follows :—

(1) 12 per cent. on capital ..	£2,400		
less Standard ..	£1,700		
		£700 at one-fifth =	£140
(2) 17 per cent. on capital ..	£3,400		
less 12 per cent. on capital ..	£2,400		
		£1,000 at one-quarter =	£250
(3) Adjusted profit..	£3,600		
less 17 per cent. on capital ..	£3,400		
		£200 at one-third =	£66
	£1,900		£456

Contribution payable = £456.

BUDGET RESOLUTIONS RELATING TO INCOME TAX.

The following Resolutions have been passed in relation to certain matters referred to by Mr. Chamberlain in his Budget Speech :—

PREVENTION OF AVOIDANCE OF TAX BY CERTAIN TRANSACTIONS IN SECURITIES.

RESOLVED,

"That—

(1) where the owner of any securities agrees to sell or transfer the securities and by the same or any collateral agreement agrees, or acquires an option which he subsequently exercises, to buy back or re-acquire the securities or to buy or acquire similar securities, any interest which, as the result of the transaction, is receivable otherwise than by the owner shall, whether it would or would not have been otherwise chargeable to tax, be deemed for all the purposes of the Income Tax Acts to be the income of the owner and not to be the income of any other person, and, if payable without deduction of tax, shall be chargeable to tax at the standard rate under Case VI of Schedule D :

(2) where a person carrying on a trade which consists wholly or partly in dealing in securities agrees to buy or acquire securities and—

(*a*) by the same or any collateral agreement agrees, or acquires an option which he subsequently exercises, to sell back or re-transfer the securities or to sell or transfer similar securities ; and

(*b*) as the result of the transaction receives any interest which becomes payable in respect of the securities ;

no account shall be taken of the transaction in computing for any of the purposes of the Income Tax Acts the profits arising from or loss sustained in the trade :

(3) for the purpose of this Resolution—

(i) the expression 'interest' includes a dividend ;

(ii) the expression 'securities' includes stocks and shares ;

(iii) securities shall be deemed to be similar if they entitle their holders to the same rights against the same persons as to capital and interest, and the same remedies for the enforcement of those rights, notwithstanding any difference in the total nominal amounts of the respective securities or in the form in which they are held or the manner in which they can be transferred."

AMENDMENT AS TO ALLOWANCE FOR DEPRECIATION OF MILLS, FACTORIES, &c.

RESOLVED,

"That any Act of the present Session relating to finance may repeal the proviso to paragraph (2) of Rule 5 of the Rules applicable to Cases I and II of Schedule D and sect. 18 of the Finance Act, 1919 (which relates to the allowance to be made for income tax purposes in respect of mills, factories and other similar premises), and may enact such other provisions in lieu thereof as Parliament may determine."

AMENDMENT AS TO ALLOWANCE IN RESPECT OF EARNED INCOME OF WIVES.

RESOLVED,

"That for the purposes of sub-sect. (2) of sect. 18 of the Finance Act, 1920 (which provides for an increased personal allowance to a claimant whose total income includes earned income of his wife), any income of the claimant's wife arising in respect of any pension, superannuation or other allowance, deferred pay, or compensation for loss of office, given in respect of his past services in any office or employment of profit, shall be deemed not to be earned income of his wife."

I.—ORDINARY REVENUE AND EXPENDITURE, 1937-38

ESTIMATED REVENUE.

	£	£
Inland Revenue—		
Income Tax	288,150,000	
Sur tax	58,000,000	
Estate Duties	89,000,000	
Stamps	29,000,000	
Other Inland Revenue Duties	1,500,000	
National Defence Contribution	2,000,000	
Total Inland Revenue		467,650,000
Customs and Excise—		
Customs	219,850,000	
Excise	113,150,000	
Total Customs and Excise		333,000,000
Motor Vehicle Duties		34,000,000
TOTAL RECEIPTS FROM TAXES		834,650,000
Post Office net receipt		11,800,000
Crown Lands		1,350,000
Receipt from Sundry Loans due to British Government		4,300,000
Miscellaneous		11,000,000
TOTAL REVENUE		£863,100,000

ESTIMATED EXPENDITURE.

	£	£
Interest and Management of National Debt		224,000,000
Payments to Northern Ireland Exchequer (including net share of reserved taxes)		8,000,000
Miscellaneous Consolidated Fund Services		3,200,000
Post Office Fund		300,000
Total		235,500,000
Supply Services—		
Defence—Excluding Pensions: Army	55,133,000	
Navy	68,196,000	
Air Force	56,018,000	
	179,347,000 *	
Pensions: Army	8,570,000	
Navy	9,869,000	
Air Force	482,000	
	18,921,000	
Civil—		
I. Central Government and Finance	2,549,000	
II. Foreign and Imperial	8,989,000	
III. Home Department, Law and Justice	23,940,000	
IV. Education (excluding Broadcasting)	59,931,000	
V. Health, Labour, Insurance (including Old Age and Widows' Pensions)	170,167,000	
VI. Trade, Industry and Transport	31,383,000	
VII. Works, Stationery, &c.	9,899,000	
VIII. War Pensions and Civil Pensions	43,934,000	
IX. Exchequer Contributions to Local Revenues	54,392,000	
	405,184,000	
Margin for Civil Supplementary Estimates	10,000,000	
Tax Collection— Customs and Excise and Inland Revenue Votes (including Pensions, £1,147,000)	13,896,000	
	627,348,000	
TOTAL EXPENDITURE		862,848,000
Surplus		252,000
		£863,100,000

*Exclusive of amounts, estimated at £80,000,000, to be met from borrowed moneys under the Defence Loans Act, 1937.

II.—SELF-BALANCING REVENUE AND EXPENDITURE

Post Office—Revenue required to meet Post Office expenditure (including Pensions £5,366,000)	£72,328,000
Grant for Broadcasting under Class IV of the Civil Estimates	2,870,000
	£75,198,000

Society of Incorporated Accountants and Auditors.

MEMBERSHIP.

The following promotions in and additions to the Membership of the Society have been completed since our last issue :—

ASSOCIATES TO FELLOWS.

CONDY, STEPHEN CHARLES (E. C. Condy & Co.), 15, Princess Square, Plymouth, Practising Accountant.

CRICK, DAVID NORMAN (Hughes & Allen), 39, Rue Cambon, Paris, Practising Accountant.

GLICKMAN, MORRIS, 70, St. George's Street, Cape Town, Practising Accountant.

LAWLEY, HERBERT DOUGLAS (Mayhew & Lawley), 62, Oxford Street, London, W.1, Practising Accountant.

MAYHEW, WILLIE OSCAR (Mayhew & Lawley), 62, Oxford Street, London, W.1, Practising Accountant.

MOSS, JAMES (John W. Hirst & Co.), 28, Queen Street, Albert Square, Manchester, Practising Accountant.

WARD, EDWARD HERBERT (Frank Impey & Co.), Lombard House, 144, Great Charles Street, Birmingham, Practising Accountant.

FELLOW.

SANDERSON, JAMES, 97, Altrincham Road, Gatley, Manchester, Practising Accountant.

ASSOCIATES.

ALLEN, JAMES ATKINSON, with Hughes & Allen, 36-37, King Street, London, E.C.2.

BOOTH, ROBERT GORDON BEALAND, with Kemp, Chatteris, Nichols, Sendell & Co., 38, Walbrook, London, E.C.4.

BROAD, HORACE WILFRID, with G. W. Welch & Co., 65, Great Portland Street, London, W.1.

BROWNING, JOHN FREDERICK THEODORE, with S. E. Denning & Co., 20, Bedford Row, London, W.C.1.

BURNS, RONALD GAVIN HAMILTON, with Wadley, Wood & Bonella, Club Arcade, Smith Street, Durban, South Africa.

CROSOER, REGINALD LIONEL, with George Mackeurtan, Son & Crosoer, Old Well Court, 376, Smith Street, Durban, South Africa.

DWEK, EDWARD JOSEPH, with Hewat, Bridson & Newby, 6, rue de l'Ancienne Bourse, Alexandria, Egypt.

GRIFFIN, DOUGLAS RAYMOND, with G. W. Bacon & Co., Norfolk House, Laurence Pountney Hill, London, E.C.4.

GRIFFITH, JOHN EDWARD LLEWELYN, with Cole, Dickin and Hills, 18, Essex Street, Strand, London, W.C.2.

GRIFFITHS, ARNOLD CLIFFORD, with Leonard Ross, 5, Walker Street, Wellington, Shropshire.

HOWARTH, JACK, with C. M. Merchant & Son, Savings Bank Buildings, Bury.

JILLARD, BERNARD RALPH, M.A., with Roberts & Pascho, 46-47, Bedford Street, Plymouth.

JOHNSON, ROBERT FRANK, with Hardcastle, Burton & Co., Coventry House. South Place, Moorgate, London, E.C.2.

KNAPPER, EDWARD FREDERICK NIXON, Crown Chambers. Richmond Hill, Bournemouth, Practising Accountant,

LAWSON, JOSEPH WALTER, formerly with H. Davey & Co., 1, Crown Court, Wakefield.

LODGE, WILLIAM FRANCIS, Borough Treasurer's Department, Municipal Buildings, Southend-on-Sea.

LONGMORE, CHARLES GEOFFREY, formerly with Hands & Shore, 106, St. George's Street, Cape Town.

MELVILLE, KENNETH RUTHVEN, with Brown, Butler & Co., 66, Albion Street, Leeds.

MUN-GAVIN, COLIN IVOR, with Compton & Horne, Colonial Mutual Life Building, West Street, Durban, South Africa.

MUNDELL, ERIC GOODWIN, with Jeffreys, Alfred Henry & Marks, 10, Coleman Street, London, E.C.2.

PEARSON, ALBERT CHARLES, formerly with Slater, Chapman & Co., 38, Holborn Viaduct, London, E.C.1.

PHILLIPS, ERIC, with F. F. Sharles, 63, Coleman Street, London, E.C.2.

RANDLE, MAURICE NOAL, with A. J. Ingram & Co., Central Buildings, West Sunniside, Sunderland.

ROSS, ROBERT GEORGE, with Salisbury, Beaton & Raynham, 9-11, Christian Street, Kimberley, South Africa.

ROWELL, JOHN RUTHERFORD, with Price, Waterhouse & Co., 31, Mosley Street, Newcastle-on-Tyne.

SANDERSON, JOHN LEONARD, with Sherwood, Baines and Co., 115, High Street, Stockton-on-Tees.

SIMPSON, HERBERT WILLIAM, with Smith & Hayward, 1, Piccadilly, Bradford.

STANIFORTH, GEORGE, Borough Treasurer's Department, Municipal Buildings, Rotherham.

TAYLOR, MARTIN, with Peat, Marwick, Mitchell & Co., 11, Ironmonger Lane, London, E.C.2.

TAYLOR, RICHARD, formerly with George E. Cooke, 78, Broad Street, Pendleton, Salford.

TICKNER, NORMAN ROBERT, with Compton & Horne, Colonial Mutual Life Building, West Street, Durban, South Africa.

WESTALL, HUBERT HAROLD, formerly with Alfred Nixon, Son & Turner, 31-37, Victoria Buildings, St. Mary's Gate, Manchester.

WELLS, WALTER THADDEUS, with H. Menzies & Co., Fife House, Fife Road, Kingston-on-Thames.

Changes and Removals.

Mr. F. W. Berringer, Incorporated Accountant, will, as from the 1st May, practise both at Bromley, Kent, and at Felpham, near Bognor Regis, Sussex.

Messrs. Darke, Robson & Co., 146, Bishopsgate, London, E.C.2, announce that Mr. F. H. Carter, Incorporated Accountant, has been admitted into partnership, and that Mr. K. G. Darke, A.C.A., having taken up special work, has retired from the firm. The name of the firm will be unchanged.

Mr. Arthur Greenwood, Incorporated Accountant, announces that the partnership of Messrs. Beeler, Greenwood & Co. has been dissolved, and that he is practising under the style of Arthur Greenwood & Co., Mitre Chambers, Mitre Street, Leadenhall Street, London, E.C.3.

Mr. F. S. Rowland has taken into partnership Mr. J. W. Donald, A.S.A.A. The partnership will be carried on under the firm name of F. S. Rowland & Co., Incorporated Accountants, at 117, Pilgrim Street, Newcastle-upon-Tyne.

Messrs. Harper-Smith, Moore & Co. announce a change of address to 7, The Close, Norwich.

Mr. Stanley I. Wallis, of 3, King John's Chambers, Bridlesmith Gate, Nottingham, announces that as from April 1st, 1937, he has admitted into partnership Mr. James Burton Carter, who served his articles with him. The practice will be continued at the same address under the style of Stanley Wallis, Carter & Co., Incorporated Accountants.

Mr. Thomas G. Wilson, Incorporated Accountant, has commenced public practice at 33, Gill Street, Brinnington, Stockport.

Could Insolvency Law and Practice be Simplified?

A LECTURE delivered to the Incorporated Accountants Students' Society of London by

MR. DANIEL MAHONY,
INCORPORATED ACCOUNTANT.

The chair was occupied by Mr. W. D. MENZIES, Incorporated Accountant.

Mr. MAHONY said: I have heard it said that more accountancy students fail in "Rights and Duties of Trustees, Liquidators and Receivers" than in any other subject. I have heard eminent accountants say that they have an intense dislike of insolvency practice. Both these factors give much food for thought. As regards the student, the reason probably lies in his incapacity to memorise lists such as the "Order of Payment of Costs in Bankruptcy," and distinguish this from analogous lists in compulsory liquidation. Possibly also the absence of practical experience is a factor. As regards the practising accountant, the dislike appears to spring from much the same source. The practice is so loaded with rules and regulations that on approaching one's first few cases one is so scared of pitfalls that the peace and quietness of ordinary audit work appears to be bliss. I must confess that for the first few years of my experience of insolvency practice I lived in a state of constant dread of breaking some rule, and the sight of a list of Board of Trade queries on my desk in the morning made me hastily put aside all other correspondence until I had ascertained that the Board's letter contained nothing other than routine matters. I learned in course of time that these communications instead of inspiring terror could afford much of interest and sometimes, though the occasions were more rare, much of amusement. In dealing with the administration of estates in insolvency, in every-day matters I found myself hampered by a theoretical acquaintance with the subject, which I had not yet been able to put into practice.

As will be obvious from the title of my paper, it is not my purpose to discuss the psychology of insolvency practice, except, indeed, in so far as procedure might be codified and simplified so as to make the subject less appalling to the uninitiated, and I therefore propose to examine the merits and demerits of the present system by comparing procedure in relation to limited companies with that obtaining as regards sole traders and non-trading individuals.

SCOPE OF SUBJECT.

My object this evening is to call attention to the similarity in function between (1) bankruptcy and compulsory liquidation and between (2) deeds of assignment and voluntary liquidation, and to advance a plea for the unification and simplifying of the law and procedure relating to each.

Taking first of all limited companies, we have :—

(1) Winding-up by the Court (*i.e.*, Compulsory Liquidation).
(2) Members' Voluntary Winding-up.
(3) Creditors' Voluntary Winding-up.
(4) Voluntary Winding-up under Supervision of Court.

I propose to deal with these in two main classes, viz. :—

(1) Compulsory Winding-up.
(2) Voluntary Winding-up.

As regards the winding-up of the estates of individuals, we have two principal methods: (1) Bankruptcy; (2) Deeds of Assignment.

COMPOSITION DEEDS.

Beyond a brief reference to them, I do not propose to introduce deeds of composition, deeds of inspectorship, letters of licence, or any such analogous procedure which has for its object the extinction of a debtor's liabilities whilst permitting him still to retain and carry on his business. These are a class apart, and do not strictly come within the category of winding-up.

ARRANGEMENTS BY LIMITED COMPANIES.

Limited companies can, by the way, enter into deeds of composition with their creditors, the main difference between them and an individual in this respect being that the deed has to be registered in the case of an individual and stands as a mark against him for all time, whilst no such registration is required in the case of a company, and, therefore, no official record of the company's failure need exist. The limited company has the added advantage of being able to bind a minority of creditors to accept its composition by applying to the Court under sect. 158 of the Companies Act, 1929.

COMPANIES' RIGHTS CONTRASTED WITH INDIVIDUALS' RIGHTS.

As regards the sole trader, any one creditor to whom he owes £50, or two or more creditors making up this sum between them, can compel bankruptcy proceedings provided the other requisites of a valid petition are available. Outside of bankruptcy, there is not for the sole trader any legal machinery by which a majority of creditors can compel a minority to accept a composition. There are various advantages and immunities enjoyed by limited companies over sole traders which will be apparent as we proceed, and it may be well at this stage to give a little consideration as to what after all a limited company is as compared with a sole trader. I am not looking at the point so much from the view of the limited liability of shareholders as the responsibility of the company for its actions.

Insolvency less than seventy years ago was regarded as a criminal offence, and the man who could not pay his debts was put in prison. The Debtors Act, 1869, was introduced to protect debtors from prison, and the protection so afforded has with various amendments been continued by our present Bankruptcy Acts. It is rather remarkable when one thinks of it, that our insolvency laws should have been designed to protect debtors, whether individuals or companies, rather than to help creditors to obtain payment of their just dues. Be this as it may, it is curious that the owners of debtor companies should enjoy immunities not afforded to their brothers who have had the moral courage to stake their all for the benefit of their suppliers. The answer is, of course, "limited liability." Personally, I fail to see any essential difference in moral responsibility between the managing owners (*i.e.*, the directors) of a limited company, and say the managing owners (*i.e.*, the partners) of a firm; much less so if the partnership happens to be a limited one. Where the company is a one-man concern, the distinction between it and a sole trader is even less remote. It is true that the one-man limited company publishes to the world, "I have only £2 in capital, so deal with me at your peril," but the moral aspect remains. In fact, his suppliers often forget in practice that they are not dealing with the man himself, and grant his company credit to an extent entirely unjustified by the capital invested. Why, therefore, should the law treat limited companies so differently from sole traders? Possibly one has to look at the *inception* of joint stock companies.

The first Limited Companies Act was passed in 1862 at a time when private individuals could still be put in gaol

for not paying their debts. It is probable that the fact of the company having no body to place under lock and key had something to do with the distinction which legislators then drew between companies and individuals as regards winding-up. At any rate, the legislature has ever since looked at the two forms of administration as being essentially different, and has made different and sometimes contradictory regulations in regard to each, to achieve what appears in ordinary commonsense to be a precisely similar object. The first Act had of necessity to be designed without the benefit of experience in practice. The company of that day was imbued with an entity apart from its members. It had, to use a well-worn expression, "neither a body to kick nor a soul to save." It enjoyed this happy state of existence until the 1929 Act, when in the fullness of time it was found desirable to make the managing owners liable for their misdeeds in relation to the company in a degree approaching that in which a sole trader was normally liable in bankruptcy. It was agreed that this was a long-needed reform.

NECESSITY FOR CODIFICATION.

What I am now going to suggest in the interests of insolvency administration generally is that the matter should be taken further by bringing the law relating to the winding-up of both companies and sole traders under one comprehensive codifying Act. In other words, take the winding-up sections out of the Companies Act altogether and amalgamate them with the provisions of the Bankruptcy Act; abolish deeds of assignment, and apply to the individual provisions similar to voluntary winding-up. Only the most suitable and most workable provisions of existing form need be retained and applied to the whole. It may sound revolutionary, but when examined in detail it is not so appalling. I can, of course, deal with the subject only in a very general way within the scope of this paper. It is not possible to go into minute detail such as that contained in the very excellent lecture on "Accounts in Insolvency" given by Mr. Radford last session and published in the *Journal* in October, 1936. I propose to confine my remarks as far as possible to general principles.

BASIC DIFFERENCE BETWEEN BANKRUPTCY AND LIQUIDATION PROCEDURES.

I must, however, trouble you at the very start with a short consideration of certain technicalities relating to petitions in bankruptcy and liquidation. I do not think I need apologise for doing so. The reason is that in these there is contained what appears to be the sole basic difference between the two procedures, namely, "Acts of Bankruptcy." There are other differences, such as the Rights of Landlords and Execution Creditors, Order and Disposition, Public Examination, Court Procedure, Vesting of Property, Disclaimer, Proxies, Proofs, Accounts—but none of these is basic, and each could quite easily be governed by the same set of rules. The whole structure of bankruptcy administration appears to have been framed around these wonderful acts of hankruptcy, and they are accordingly worthy of some examination in detail. Let us, however, arrive at them in their natural sequence, and discover them as part of the requirements of a valid petition.

REQUIREMENTS OF VALID PETITION.

Liquidation.	*Bankruptcy.*
(1) That the company has passed a special resolution to wind-up compulsorily—in other words, filed its own petition.	(1) That the debtor has filed his own petition.
(There is no essential difference here.)	
(2) That the company has not commenced business within one year, or has suspended business for one year.	(2) That the debtor is subject to the bankruptcy laws of England.
(3) That the number of members has sunk below seven in public company or two in private company.	(3) That the debtor has committed an act of bankruptcy within three months.
(4) That statutory meeting not held within proper time or that statutory report not circulated prior to meeting.	(4) That the debt existed when the act of bankruptcy was committed.

(These are points of technicality in each case which have no parallel as regards each other. The provisions as regards companies need no comment, whilst those regarding bankruptcy introduce acts of bankruptcy.)

	Acts of bankruptcy may be divided into three main headings, as follows:—
	(A) *Personal acts or defaults on the part of the debtor, i.e.*, leaves England; departs from his dwelling; absents himself or begins to keep house.
	(B) *Fraudulent Dealings with his property, i.e.*, a fraudulent conveyance or a fraudulent preference.
(5) That the company is unable to pay its debts,	(C) *Acts which show that he is unable to pay his debts:*
defined as follows:—	(*a*) Deed of assignment executed.
(*a*) If an execution on a judgment debt is not fully satisfied.	(*b*) Execution levied and goods sold or held by Sheriff for 21 days.
	(*c*) (1) Failure to comply with a bankruptcy notice.
	(2) Declaration of inability to pay his debts filed by debtor.
	(3) Notice of suspension of payment given by debtor.
(*b*) If a creditor for £50 or more serves notice on the company demanding payment, and the company does not pay within three weeks.	(5) That the debt or debts petitioned for amount to £50 or more.
(6) That the Court considers it just and equitable.	

It will be seen at a glance that the provisions relating to companies are in substance similar to some of the acts of bankruptcy. Bankruptcy is, however, burdened with more onerous regulations. It is not sufficient in bankruptcy merely that the debtor has not paid. In companies it is.

Acts of bankruptcy are nothing more or less than recitals of circumstances on which it might be said that a man showed intention of not paying or incapacity to pay his debts. But why should all the technicalities be necessary? Any solicitor experienced in insolvency work will tell you that the difficulties of obtaining a receiving order in bankruptcy are far greater than in companies liquidation. What I have described as the Personal Acts and Fraudulent Dealings under (A) and (B) are rarely in

practice made the basis for a petition. Owing to technical difficulties, they might in fact be regarded as a dead letter. Petitions are almost invariably founded on the Acts which show that a debtor is unable to pay his debts, the chief amongst these being the execution of a deed of assignment, the failure to comply with a bankruptcy notice, and the notice of suspension of payment. The two first mentioned are easily proved from documents. The third is much more difficult. The latter depends mainly on case law, and may prove a trap for the unwary. Let me give an instance. About forty years ago a harassed lady created legal history by standing at the top of her stairs and shouting to an importunate creditor at the door that her solicitor had told her not to pay anyone, or words to that effect. The creditor filed a petition alleging that this was a notice of suspension of payment. The creditor succeeded, it being held that the intimation given by the debtor showed that she had taken legal advice and intended to deal with her creditors generally and not individually. This contrasts with another case in which a solicitor on behalf of a doctor sent out a notice calling a meeting of creditors. In this case it was held that the solicitor's letter did not constitute notice of suspension of payment. The cases on the point are so varied and sometimes so contradictory that it is advisable to obtain an act of bankruptcy other than that of "Suspension of Payment." If, therefore, the debtor is unwilling (which is probable) to file a declaration of inability, there remain out of all the cited Acts, for practical purposes :—

(1) Execution of a Deed of Assignment.
(2) Non-compliance with a Bankruptcy Notice.
(3) Execution levied by the Sheriff.

When compared with company requirements, No. 1 has no direct parallel, No. 2 contrasts with the giving of twenty-one days' notice demanding payment, and No. 3 is practically the same in both procedures.

If deeds of assignment were abolished (and I am later going to advocate that they should be) there need then be, from a practical point of view, no difference as regards the essentials of a petition in a liquidation and in a bankruptcy.

Acts of Bankruptcy—Technicality and Injustice.

Let us return to a further consideration of acts of bankruptcy. What of their origin? The learned persons who introduced them into early bankruptcy legislation must have seen the necessity for enumerating circumstances from which it would be apparent that a debtor was unable to pay his creditors or had decided not to pay. It is curious that despite their antiquated and sometimes ridiculous wording, no attempt to alter or explain them has been made in any subsequent Act. They have instead been so mutilated by case law that their original intention has in many cases been obliterated. They have developed technicalities which often prove to be a negation of justice. Let me give but one example from my own experience. (I could quote several.)

I discovered that a bankrupt of whose estate I was trustee had repaid to his son £3,000 within three months of the commencement of the bankruptcy. For purpose of camouflage, there had been an exchange of comparatively small amounts almost daily between father and son. In all, the father had during the three months paid to the son £7,000, and the son had paid to the father £4,000. The amount due to the son at the commencement of the three months was approximately £3,000, so that at the date of the receiving order accounts were about square, but there was what appeared to me to be an obvious fraudulent preference. A motion was launched. Judgment was given in my favour, not for £3,000 as you might expect, but for £7,000. The reason was this. The first payment by the father to the son within the three months was established as a fraudulent preference, *ipso facto*, an act of bankruptcy. Every subsequent payment was thus received by the son with technical knowledge of an act of bankruptcy. I was accordingly entitled to judgment for everything paid to the son, and he, because he had notice of an act of bankruptcy, was not protected as regards amounts paid by him to his father. I, as trustee, was naturally very pleased, but if the son received justice, I think you will agree that it was not even of the order known as "rough."

Powers Accorded to Acts of Bankruptcy.

Now let us turn to some of the attributes accorded to acts of bankruptcy. They are a magic seven, and fix :—

(1) The date of commencement of the bankruptcy.
(2) The relation back of the trustee's title (sect. 37).
(3) The withdrawal of protection to creditors receiving payment for the debtor (sect. 45).
(4) A trustee under a deed of arrangement with liability to be treated as trespasser.
(5) The landlord's right to retain only six months' rent.
(6) The extinction of an execution creditor's right to recover.
(7) Goods claimable under the Order and Disposition clause.

Effect of Abolishing Acts of Bankruptcy.

If we could rob acts of bankruptcy of these powers, we would have gone very far, if not indeed nearly all the way, to blotting out the differences between the basic principles of bankruptcy and liquidation. And why not abolish them? Why not substitute for date purposes the date of presentation of the petition?

Fraudulent Preferences.

As an example, sect. 265 of the Companies Act, 1929, adopts sect. 44 of the Bankruptcy Act, 1914, and applies to fraudulent and undue preferences the same principles in both procedures. It is a remarkable reflection on the Bankruptcy Act that this section is the only one which in its entirety was adopted by the persons who drafted the first Companies Act. Apparently they regarded with contempt all the other provisions of the Bankruptcy Acts. It is less remarkable that a recent decision in the Courts (*M.I.G.* case (1934), House of Lords, A.C., 252) has rendered the section almost ineffective, so that now actions relating to fraudulent preference are very rare owing to impossibility of proof.

Doctrine of Relation Back and Protected Transactions.

Let us consider for a moment what effect it would have, say, on relation back of trustees' title if the bankruptcy were made to commence at the date of presentation of the petition.

Under sect. 37 the trustees' title to the property of the bankrupt relates back in date to the first act of bankruptcy committed by the debtor within three months of the petition. Fraudulent preferences would not be affected. They are under sect. 44 based on the date of the petition, and go back three months. What, then, would be affected? Mainly sums paid by the debtor to his creditors and his solicitors after the creditor or solicitor has had notice of an act of bankruptcy. But if a creditor in good faith and without notice of the act of bankruptcy receives payment, he is protected under sect. 45. "Good faith" appears to rule out the operation of the doctrine. If there is an absence of good faith, it should usually be possible to attack the transaction on some ground outside the scope of sect. 37. There is in fact very little of substance

in the section apart from technicality, which more often than not operates unjustly and inequitably.

Creditors generally would lose little, if at all, should the date of the trustee's title relate back to the date of the petition rather than the act of bankruptcy. There appears to be no valid reason why in the case of a company the liquidator's title should not relate back to the date of the petition rather than to the date of the winding-up order as at present, and so bring the two procedures into conformity.

TRUSTEES UNDER DEEDS OF ARRANGEMENT.

There is probably no more unjust provision in the whole legislature than that which provides that a trustee acting *bona fide* for the benefit of creditors under a deed of arrangement may be treated as a trespasser. It is one of the evils of the doctrine of relation back. So keenly is its injustice felt that there is amongst reputable practitioners an unwritten law that an accountant appointed as trustee in bankruptcy will never attack another accountant who has acted *bona fide* for the benefit of creditors under a deed of assignment. Unfortunately, Official Receivers have no discretion as regards unwritten laws, and they are often compelled under the written law to take a course of action which they themselves are the first to regard as unjust. The fact remains that by the "unwritten law" the effect of the enactment is defeated.

LANDLORDS' RIGHT OF DISTRESS, AND JUDGMENT CREDITORS' RIGHT OF EXECUTION.

These headings bring us to one of the most curious and at the same time typical features of legislation relating to insolvency. Landlords' rights appear to be one of the legacies left to us from the feudal system. They have been amended, it is true, by successive generations of legislators. But it is not without significance that for the greater part these successive generations were required to possess as their main qualification for law-making the fact that they were landed proprietors.

I can never understand why a man because he is a landlord should have a right to put in the sheriff immediately if his rent be in arrear, whilst a trader who has supplied goods possibly to the value of a hundred times the amount of that rent, cannot avail himself of the services of the same sheriff unless and until he has first had recourse to the Courts and obtained judgment.

One can scarcely help admiring the sense of humour of the man of law who called the landlord's operation "putting in distress" and applied the epithet "putting in execution" to that of the judgment creditor. These differences are not, however, nearly so difficult to understand as the inconsistencies which apply to the rights of a landlord in bankruptcy as compared with the landlord of a company in or about to go into liquidation.

As I have said, it was my intention to avoid as far as possible technicality or detail, but as they illustrate better than anything else the absurdity of the differences between company and bankruptcy regulations, I have set them out in summarised form side by side, as follows.

LANDLORD IN LIQUIDATIONS.	LANDLORD IN BANKRUPTCY.
Apart from sect. 264 (6), Act appears to be silent as to landlords' rights. Rights depend on common law and case law.	Sect. 35 governs the landlord's rights.
Where landlord distrains within three months of winding-up he has to pay out preferential creditors, but has right of subrogation (sect. 264 (6)).	Landlord may distrain at any time either before or after commencement of bankruptcy (*i.e.*, act of bankruptcy), *but* if levy takes place after the commencement of the bankruptcy he can only recover six months' rent accrued due prior to the date when adjudication takes place. He is further limited to rent accrued due up to date of distraint, that is, he can only recover rent actually due at the date when he distrains.
There is nothing in the Act to compel a landlord to hold for 14 days after sale.	If an execution creditor happens to have the Sheriff in before the landlord, the execution creditor must give way to the landlord to the extent of at least six months' rent.
There is nothing to restrict the landlord from recovering more than six months' rent.	Where landlord distrains within three months of *receiving order* (receiving order this time you notice), he has to pay out preferential creditors, but has rights of subrogation (sect. 33 (4)).
Where distress levied before commencement of winding-up, but not completed by sale, Court has power to restrain further proceedings, but will only do so if special circumstances render a sale inequitable.	
Landlord not allowed to distrain after winding-up for rent accrued due prior to commencement of winding-up (*Traders (N. Staff.) Carrying Company*, 1875).	
Where landlord levied after winding-up for rent payable in advance, he was allowed to retain only rent due during period of occupation by liquidator, and had to prove for balance.	
Where landlord distrained before liquidation for rent payable in advance covering period after liquidation he was allowed to retain the whole amount (*Venner* v. *Thorp*, 1915). See *Gore Brown* for others.	
EXECUTION CREDITORS IN LIQUIDATIONS.	**EXECUTION CREDITORS IN BANKRUPTCY.**
Sect. 268 : Execution creditor not entitled to retain as against liquidator unless execution completed (*i.e.*, by seizure and sale) before commencement of winding up. (Date on which notice of meeting for voluntary winding-up is received by creditor is to be considered as commencement of winding-up).	Sect. 40 : Execution creditor not entitled to retain as against trustee unless execution completed (*i.e.*, by seizure and sale) before date of receiving order and without notice of a petition or an act of bankruptcy.
Sect. 269 (1) : Where notice is served on Sheriff (that prov. liquidator appointed or winding-up order made or *resolution for voluntary liquidation passed*) before the sale or the completion of the execution, he must hand over to the liquidator, whether the debt is less than £20 or not, after deducting his costs.	Sect. 41 (1) : Where notice is served on Sheriff (that a receiving order has been made) before the sale or the completion of the execution, he must hand over to the Official Receiver or Trustee, whether the debt is less than £20 or not, after deducting his costs.
(2) Where judgment debt exceeds £20, Sheriff must retain for 14 days. If within that time notice of a petition or a meeting for voluntary winding-up is served on him, he must pay amount in hand to the liquidator after deducting his costs.	(2) Where judgment debt exceeds £20 Sheriff must retain for 14 days. If within that time notice of a petition is served on him, he must pay amount in hand to the Official Receiver or Trustee, after deducting his costs.

It will be seen that in liquidation the Companies Act is silent as regards landlords' rights, and apparently it was intended that the landlord should have the full remedies accorded to him by the Landlord and Tenant Act of 1709 and the County Court Act of 1888. The only alteration imposed by the Companies Act is that the landlord should pay out preferential creditors. In the Bankruptcy Act the landlord's rights are fully defined, and he is subjected to restrictions. As regards execution creditors, the general regulations relating to liquidation and bankruptcy are the same, word for word, except that we get such alterations as "Provisional Liquidator," "Resolution for Voluntary Liquidation," "Act of Bankruptcy," &c. If the commencement of a bankruptcy were made dependent on the date of the petition, and the commencement of a liquidation made also on the petition, or the resolution of the directors to wind-up voluntarily, even these differences could be reduced.

Sheriff's Officers' Sales.

Whilst passing, may I say that I can never understand why even though a petition is presented, a sheriff's officer is allowed to sell goods on which he has levied. Sheriff's officers' sales as a rule may be regarded as "God's gift to the Job Buyer." The goods are sold with a minimum of advertisement and without reserve. Sheriff's officers might be divided into two classes—the good and the bad. The good ones will usually defer sale or agree to sell at an auction room where the creditors can make certain of getting the best price. The bad ones will obstinately insist on selling through their usual auctioneer. I look forward to seeing a change in the law which will prohibit a sale by the sheriff once he receives notice that a petition has been filed. Such a provision would save incalculable loss to creditors. I can see no difficulty in making the fact of execution or distress levied grounds for filing a petition. The petition need not be advertised for, say, fourteen days, and if in the meantime the sheriff is paid off, the petition and its record could be withdrawn.

Order and Disposition.

This is the last heading of what I have called the magic circle of the acts of bankruptcy. It has no parallel in companies winding-up. I have never been able to understand why. The section in Bankruptcy has for its object the recovery for the creditors of assets which were so placed in relation to the debtor's business that they would inspire confidence in a supplier, and lead him to give credit to the debtor. The Bankruptcy Act said that such goods must pass to the trustee. There are, of course, exceptions to this, such as the establishment of a well-known trade custom that the goods are held on sale or return.

Having regard to the fact that a company can equally well with a sole trader hold goods in such a way as to tempt suppliers to give the company credit, I cannot understand why the clause was omitted from the Companies Act. In its incidence it appears to be a right and proper thing for the protection of creditors.

I think I have now completed consideration of all the principles of bankruptcy which are directly affected by acts of bankruptcy. I have searched through the text book for other items of principle in which the regulations of bankruptcy contrast with those of companies liquidation. I can find only one, namely:

Disclaimer.

In bankruptcy property vests in the trustee, whilst in liquidation the liquidator is merely the agent dealing with it on behalf of the company, and the property does not vest in him. Curiously enough, up to 1929 the Companies Acts were silent as regards disclaimer, and I think you will agree for a very good reason, viz., that the liquidator had nothing to disclaim, as nothing was vested in him.

Disclaimer does not relieve a debtor estate of liability. Its sole object is to relieve the trustee from personal liability as regards onerous property and leases vested in him. I do not say that assets in liquidation never vest in a liquidator; they can do so if a special vesting order is made on a special application to Court, but what liquidator would be so stupid as to apply for a special Order of the Court to vest in himself property which is so burdened with onerous covenants that he wishes to disclaim it at the same time?

Now, for some unknown reason, presumably to bring the Companies Act more into conformity with the Bankruptcy Act, the disclaimer clauses of bankruptcy were, by the 1929 Act, brought into effect as regards companies. On the first occasion when they were taken before a High Court Judge, the decision was given that there was no need for the liquidator to disclaim, that his proper course was to wind up the company as quickly as possible, achieve its dissolution with a minimum of delay, and as it went out of existence on dissolution the landlord's rights in respect of rent or loss of rent ceased.

Minor Inconsistencies.

I can find little more of any real consequence to discuss in relation to differences between broad principles of bankruptcy and liquidation. There is, of course, the question of public examination. In bankruptcy a public examination of the debtor invariably takes place, whilst in companies liquidation recourse is had to it only where fraud is alleged against a director. If I may again refer to them as "Managing Owners," it seems extremely unfair that the "managing owners" (the directors) of a limited company should escape publicity for their alleged misdeeds whilst the sole trader (perhaps honest and unfortunate) has to face the disgrace of having his affairs examined in public. Let me not be misunderstood, however. I do not advocate the abolition of public examinations. They are far too useful to trustees. Rather would I like to see them applied to directors of companies.

Court Procedure.

As regards Court procedure, there are all kinds of minor differences which could quite easily be made the subject of unification. I am not going to trouble you with a detailed examination of these. I will just mention a few of the minor points. Why, for instance, should a person holding a proxy in liquidation be prohibited from voting for his own appointment as liquidator, whilst in similar circumstances he is perfectly free to vote for his own appointment as trustee in bankruptcy? Why should proofs of debt in compulsory liquidation require a 1s. stamp only, whilst in bankruptcy the amount is 1s. 6d.? Why should proofs of debt in compulsory liquidation be issued to foreign creditors in foreign languages, whilst the bankruptcy department confines itself to English for all?

I could go on detailing petty differences until you were so weary that you would leave the room.

Irreconcilable Differences.

There must, of course, be regulations relating to liquidation which can have no possible parallel in bankruptcy, and *vice versa*. For instance, in liquidation there must be the question of settling the list of contributories, whilst in bankruptcy there are the regulations about anti-nuptial settlements. When, however, you examine the text book, I think you will agree that there is no point of real principle with which I have not already dealt, and I

think you will agree that it should be possible to so codify the law and procedure relating to bankruptcy and compulsory liquidation as to bring the two into very close conformity.

DEEDS OF ASSIGNMENT.

The first impression which deeds of assignment made on me was to remind me of a proposition in the second book of Euclid which contained a big square with a very much smaller square tacked on to it. We schoolboys referred to it disrespectfully as "Molly and the baby." The space given to the subject at the end of textbooks on bankruptcy is so limited that one begins to wonder whether Molly was such an exhausting person to deal with that those looking after her had no energy left to give proper attention to the baby.

At the very outset we find that the execution of a deed of assignment amounts to an act of bankruptcy, and in consequence any person dealing with the debtor's assets is taking them with notice of this tremendous defect of title. It might almost be said of deeds of assignment that they are "born in sin." As though they were being true to the characteristic of their birth, their defect in practice lies in the fact that no one can be compelled to accept them.

Deeds of assignment were first introduced about one hundred years ago. Their history is rather a remarkable one, and from the point of view of interest would be well worthy of the attention of the Parent Societies' Research Committee. You might argue from their age that deeds of assignment have stood the test of time, but if they have come through a century of use, one is appalled at the amount of abuse of which they must have been made the subject. Their greatest defect, as I have already said, is that no creditor can be compelled to accept unless he so chooses. No reasonable person will be prepared to deny any creditor his right to payment in full unless the circumstances are such that for the general good of all he should take less. I have, however, in practice met not one, but many cases where one greedy creditor for a small amount, by insisting on his legal right to accept nothing less than 20s. in the £, has forced an estate into bankruptcy, to the detriment not alone of himself, but of all the other creditors. I remember one case in which the total liabilities were £40,000, and the petitioning creditor's debt £200. The object underlying the action of these small creditors in most cases is not a genuine desire to obtain 20s. in the £ as a matter of principle. They are rather out to blackmail the debtor into paying themselves more than other creditors are willing to accept. In order to save himself from bankruptcy, they expect the debtor to borrow money from his friends to pay them a bit extra. They do not, of course, come out into the open, or they would render themselves liable to be penalised. Rather do they work craftily in the shade of a solicitor, on the excuse of safeguarding their legal rights.

DEEDS OF ASSIGNMENT CONTRASTED WITH VOLUNTARY LIQUIDATION.

Let us consider for a moment what deeds of assignment really amount to in broad principle. They are a "friendly" arrangement between a debtor and his creditors outside of bankruptcy, by which a debtor hands over to a trustee for the creditors the whole of his assets. The instrument by which this operation is effected is known as a deed of assignment, and the powers and duties of the trustee are set out in the deed. If all the creditors assent to the deed, the debtor is relieved of his debts, but, as I have said before, there is no means of compelling a dissenting creditor to accept, and even if he does not take proceedings in bankruptcy he can still remain outside of the arrangement, refuse dividend, wait until the debtor becomes prosperous again, and then sue for the amount due to him, provided, of course, the Statute of Limitations has not intervened.

Now let us contrast this with the broad principles of voluntary liquidation. Voluntary liquidation might be said to be a "friendly" arrangement between a company and its creditors outside of compulsory liquidation. If a majority in number and value of the creditors agree to voluntary liquidation, all other creditors are, for practical purposes, bound by the majority decision. Why should the one-man company to which I referred in my opening remarks enjoy this privilege, whilst the sole trader, whose all is at stake, be made a subject of blackmail in similar circumstances? Why should there not be for the sole trader a system of winding-up on lines similar to the voluntary winding-up of a company?

If I undertook to contrast deeds of assignment with voluntary liquidation, much in the same way as I have already contrasted bankruptcy and compulsory liquidation, I could find parallel circumstance after parallel circumstance in which the procedure under each system is grossly and sometimes ridiculously at variance. There appears to be a crying necessity for amendment of the Deeds of Arrangement Act, and it is to be hoped that Chambers of Commerce and other public bodies and learned societies may interest themselves in the matter.

I thank you for the patience and attention with which you have listened to me.

Discussion.

Mr. F. C. DAY, Incorporated Accountant: I should like to know what steps follow where a creditor, instead of employing a solicitor to sue for a debt, swears an affidavit—in other words, takes out a summons himself. Does the Court give him an Execution Order, or something like that, or a writ on which he can sue? I have one other point. Very often when a man gets into financial difficulties he still holds a lot of stock which creditors have supplied. Is there any reason why the creditor should not say to the debtor, "Return those goods and I will give you a credit note"? Would that be a fraudulent preference?

The LECTURER: First of all, I have a suspicion that you are trying to get me into prison, because you are asking me to give legal advice, which is really a solicitor's business. I think it would not be out of place to warn you that the solicitors have the equivalent of a very powerful Trade Union in the Law Society, which has power to prosecute anyone who gives legal advice without being qualified as a solicitor. I regret, therefore, that although I could perhaps give you some slight idea of what you want to know, I am prohibited from doing it. You will have to ask a solicitor. With regard to the return of stock, I have had cases in which for the first time in the history of a debtor's dealings with one of his creditors, the creditor has bought stock from the debtor within a very short time of the debtor's failure—cases of apparent fraudulent preference. I was concerned in two such cases in Court one day, and one followed the other. Both, to my mind, were almost exactly similar in circumstance; both were cases of a debtor returning goods to his creditor. I succeeded in one and I failed in the other, and I can never quite understand why.

The CHAIRMAN: By way of continuing the discussion, I am going to make a contribution from an absent member. Many of us know Mr. Hussey, who was here on another occasion, and took one of the groups when we broke up for group discussion. He has written to Mr. Mahony and says he has been looking forward to his address, but he is unable to attend owing to an attack of laryngitis. Mr. Hussey continues: In wishing you every success for to-morrow evening, may I hope that your audience will

appreciate that sooner or later they will be called upon to face the same problems that confront the insolvency practitioner to-day, unless there is some alteration in the law. Doubtless your paper will include a reference to the expense of bankruptcy and compulsory liquidation proceedings, especially in the initial expense of obtaining an Order, which falls on a creditor if there are no assets. I expect you agree that no debtor or company should escape proceedings because no creditor will add to his loss in cases where there are no assets. The State should bear the expense in these cases. The other point which I had in mind, which I know is equally dear to you and all Incorporated Accountants, is "solicitation." Any improvement in this direction is to be welcomed. It is exceedingly disheartening to all qualified accountants who endeavour to maintain professional dignity and prestige, to constantly be losers to those who place the foregoing attributes last on their list of qualifications necessary for appointment in insolvency cases. It is not every person who can become a public auditor. Why, then, cannot a panel be constructed on the same lines to deal with insolvencies?

The LECTURER: With regard to Mr. Hussey's first point, I have not gone into the fine detail into which I think he expected me to go. I have dealt more with broad principles. But undoubtedly in practice, one of the great difficulties that faces creditors is that when a debtor fails and leaves no assets, they have to put their hands into their pockets to follow him—or to chase him, if you prefer that term. The cost of filing a petition is somewhere between £25 and £30, and, as a rule, one creditor, at any rate, is never keen to find the whole of this. To use his own expression, he is not prepared to throw good money after bad. You can sometimes, of course, convene a meeting of the creditors and get them to subscribe a small percentage, but even then you will probably find two or three will subscribe and the remainder stand aside and hope somebody else will do it. I am not going to dwell on the point of solicitation. I think the idea of having a panel similar to that of Public Auditors is an excellent one. It would solve a great number of difficulties, and I hope that some time it may be instituted. I was very sorry to hear that Mr. Hussey is unwell, and I am sure you will join me in wishing him a speedy recovery.

Mr. E. J. GAMBLE, Incorporated Accountant: Can you tell me why the disclaimer clauses were put in the Companies Act if no property vests in the liquidator? Was it merely a mistake, or was there some reason for it?

The LECTURER: I think possibly it may have been a mistake, though of course one would hesitate to charge any of the learned people who draft Acts of Parliament with making a mistake. But there is just one possible use for it that I can see. Supposing in the early stages of a liquidation you think it necessary to have the property so vested in you that you can deal with it as absolute owner, and you subsequently find it is necessary to get rid of it. Then you might make use of the disclaimer powers. But I cannot imagine any other possibility, and of course it is a very rare thing to apply for a vesting order in the early stages of liquidation. One would only do it for the purpose of giving a good title in very exceptional circumstances, and I have never, in practice, known it to be necessary.

Mr. G. ROBY PRIDIE, Incorporated Accountant: I am not rising to ask questions, because liquidations and bankruptcy is a field of which I really know very little indeed. Our Lecturer, at the commencement of his lecture, did mention that some practitioners very much dislike bankruptcy matters, and I am afraid I must rather plead guilty to that, so a great deal of this type of professional work has not come my way. But some years ago I had a curious experience with regard to landlord's rights. A limited company got into difficulties, and I was appointed by the Court on an emergency order as receiver for the debenture holders. The company subsequently went into liquidation. On taking possession, which I did within an hour or two after the solicitor in the case had given, prior to the Court Order being issued, a guarantee that the money for the workmen's wages would be forthwith found, I discovered at the works that the landlord had attempted the day before to distrain for rent, and hence the hasty action in getting my appointment. He was bluffed out by one of the directors. The next day, after I had taken possession, the bailiff came along again, and I pointed out to him that two people could not be in possession of the same assets at the same time, and so he had to stand down. Eventually the landlord's solicitors got on the job, and they saw the liquidator and myself, and asked me what I was going to do. I told them "All I am prepared to do as receiver is to pay *pro rata* rent day by day, as long as I am in possession of the premises, and nothing more." They replied that was not good enough, so I asked what their procedure would be, and was informed that the only procedure that could be taken was for them to apply to the Court for my ejection, apparently as a trespasser. I ascertained that it would take at least three weeks to get the ejection order through. Meanwhile, I was very happy to inform the solicitors that I had already advertised the concern for sale, and the auctioneers' notices were up, and within fourteen days I hoped to vacate the premises in their favour. In due course I subsequently paid the landlord the *pro rata* rent only covering the period of my beneficial occupation as receiver. From that day I never heard anything more about it. On the question of disclaimer, I had an interesting case a few years ago where a trustee in bankruptcy claimed certain leasehold property. The sister of the debtor had lent her brother some money and obtained a very amateur charge on the property. The trustee pooh-poohed the charge note, and the sister, a somewhat strong-minded lady, without the aid of a solicitor, found her way into the Courts and eventually got her prior charge allowed by the Court, and the trustee in bankruptcy then promptly disclaimed.

The LECTURER: I cannot quite understand the position, Mr. Pridie. If liquidation had not intervened, I think the landlord could still have come in after you had taken over as receiver. As you say, you bluffed him out.

Mr. PRIDIE: No; he was bluffed out by the directors before I came on the scene.

The LECTURER: You as receiver would have had to pay the rent, as far as I can see. You actually had to pay the rent?

Mr. PRIDIE: For the actual period of receiver's occupation only.

The LECTURER: And the arrears?

Mr. PRIDIE: No, no arrears at all. Only for the actual time of my beneficial occupation as receiver.

The LECTURER: I think the landlords were entitled to the arrears if the company was not in liquidation, subject to obtaining leave of the Court, since your appointment was by the Court.

The CHAIRMAN: In common with a large number of the audience, I am not going to say very much on this subject, but I think we are all agreed that we want to see the subject simplified, and we are fortunate in having an Incorporated Accountant with the knowledge and energy to see that our contribution is made to such simplification. I, for one, will be very relieved indeed when insolvency law is made comprehensible, because I certainly put myself on the list of those practitioners who avoid liquidation and bankruptcy work as much as possible.

Votes of thanks to the Lecturer and Chairman terminated the proceedings.

THE CORONATION PROGRAMME.

Trade and industry throughout Britain is co-operating loyally in making the forthcoming Coronation of King George VI and Queen Elizabeth an event of strong and intimate significance to millions of employees.

Not the least effective and generous method that is being widely adopted is the presentation of copies of the beautiful and comprehensive Official Souvenir Programme to the rank and file of shops, offices, and factories.

It is a splendid gesture, one that will strengthen even further the ties between employer and employee at a time when all classes are united in hope for the reign which now begins.

The Official Souvenir Programme has been prepared with the King's full approval, and His Majesty is anxious that it shall be in the hands of as many of his subjects as possible, particularly those who, being far from London, will follow the events of the historic occasion by radio.

At His Majesty's express wish, this Official Programme is published by and on behalf of King George's Jubilee Trust. So that those employers who distribute presentation copies will not only be paying a gracious compliment to those now in their employ, but will be helping to promote the welfare of those who will be the workers of to-morrow.

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Embossed on the cover is the Royal Coat of Arms in full colours and gold. There is a personal message from His Royal Highness the Duke of Gloucester, and special photographs of Their Majesties the King and Queen, Her Majesty Queen Mary, and Their Royal Highnesses the Princesses Elizabeth and Margaret. John Masefield, the Poet Laureate, has contributed "A Prayer for the King's Reign," and the late Mr. John Drinkwater an article on "The King's Majesty," in which he outlines the significance of the new reign to the Empire.

A pictorial map of the route, a description of the procession, the full text of the Service in the Abbey, with an introduction by the Archbishop of Canterbury, and a description of the Coronation Ceremony by the Garter Principal King of Arms, all make the Official Programme a vital key to the pageantry and solemnity of May 12th.

The Programme is available in two editions—a standard edition at 1s., and a special edition at 2s. 6d. All applications should be addressed to King George's Jubilee Trust, St. James's Palace, London, S.W.

Lieut.-Colonel A. Dunstan Adams, M.C., F.S.A.A., has been nominated by the Government of Kenya Colony to represent The Kenya Regiment (Territorial Force), of which he is the Officer Commanding, in the Coronation Procession and at other ceremonies in which Dominion and Colonial troops will take part.

FORTHCOMING REVENUE CASES.

The following cases are on the list for the Easter Sittings :—

CASES STATED.

Sir Thomas D. Barlow, K.B.E., and The Commissioners of Inland Revenue.

Woodhouse & Co., Ltd., and The Commissioners of Inland Revenue.

Evelyn Laye and C. Dodsworth (H.M. Inspector of Taxes).

Richard Hodgson Read and The Commissioners of Inland Revenue.

Mrs. C. M. Benn and The Commissioners of Inland Revenue.

Allied Newspapers, Limited, and R. Hindsley (H.M. Inspector of Taxes).

Commissioners of Inland Revenue and N. D. Cohen.

John White's Trust, Limited (in liquidation) and The Commissioners of Inland Revenue.

Helen Palmer, Executrix of Richard Elliott Palmer, deceased, and Frederick Joseph Cattermole (H.M. Inspector of Taxes).

F. Wilson (H.M. Inspector of Taxes) and J. K. Mannooch.

G. Dingley and H. C. MacNulty (H.M. Inspector of Taxes).

The Commissioners of Inland Revenue and British Salmson Aero Engines, Limited.

F. O. G. Lloyd and S. W. Grand (H.M. Inspector of Taxes).

G. H. Cross (H.M. Inspector of Taxes) and London and Provincial Trust, Limited.

The London and Northern Estates Company, Limited, and F. P. Harris (H.M. Inspector of Taxes).

G. A. H. Beams (H.M. Inspector of Taxes) and The Weardale Steel, Coal and Coke Company, Limited.

E. Long (H.M. Inspector of Taxes) and Belfield Poultry Products, Limited (in liquidation).

Commissioners of Inland Revenue and Sir Harry Mallaby-Deeley, Bart.

Thornber Brothers, Limited, and N. G. Macinnes (H.M. Inspector of Taxes).

J. A. and J. Dawson and A. F. Wightman (H.M. Inspector of Taxes).

Watson Brothers and W. G. MacInnes (H.M. Inspector of Taxes).

H. E. Denny and J. J. Davies (H.M. Inspector of Taxes).

The Rev. Lionel Corbett and Commissioners of Inland Revenue.

Bennett Oswald & Worskett and H. P. Bennett (H.M. Inspector of Taxes).

H. C. Gray (H.M. Inspector of Taxes) and The Rt. Hon. The Lord Penrhyn.

H. J. G. Alford (H.M. Inspector of Taxes) and Gamis's Stores, Limited.

Major D. H. B. McCalmont and Commissioners of Inland Revenue.

Alexander R. Brown and R. B. Adamson (H.M. Inspector of Taxes).

Cuthbert Dixon and Commissioners of Inland Revenue.

H. P. Bennett (H.M. Inspector of Taxes) and G. A. Marshall.

Radio Pictures, Limited, and Commissioners of Inland Revenue.

Commissioners of Inland Revenue and A. E. K. Cull.

The Commissioners of Inland Revenue and The Honourable Dorothy Wyndham Paget.

British Sugar Manufacturers, Limited, and F. P. Harris (H.M. Inspector of Taxes).

R. P. Baker, liquidator of First National Pathè, Limited, and H. G. Cook (H.M. Inspector of Taxes).

Carlyon Estates, Limited, and Commissioners of Inland Revenue.

The Trustees of Mitcham Golf Course and S. G. Ereaut (H.M. Inspector of Taxes).

Lever Brothers, Limited, and Commissioners of Inland Revenue.

Incorporated Accountants' South Wales and Monmouthshire District Society.

ANNUAL DINNER.

The annual dinner of the Incorporated Accountants' South Wales and Monmouthshire District Society was held at the Park Hotel, Cardiff, on April 2nd. Mr. PERCY A. HAYES (President of the District Society) was in the chair, and the company included the Lord Mayor and the Lady Mayoress of Cardiff (Mr. Herbert Hiles, M.B.E., J.P., and Mrs. Hiles); the Right Hon. Lord Portal, D.S.O., M.V.O.; Mr. R. Wilson Bartlett (President, Society of Incorporated Accountants and Auditors) and Mrs. Bartlett; Mrs. Hayes; the Mayor and Mayoress of Newport (Major and Mrs. I. Cameron Vincent); the Mayor of Merthyr (Alderman D. J. Evans, J.P.); Captain J. Elliot Seager, J.P. (High Sheriff of Glamorgan); Mr. Arthur Jenkins, M.P., and Mrs. Jenkins; Captain Arthur Evans, M.P.; Lieut.-Colonel Sir Rhys Williams, K.C.; Sir William James Thomas; Judge L. C. Thomas; Mr. A. T. James, K.C.; Mr. O. Temple Morris, K.C., M.P., and Mrs. Morris; Mr. S. R. Ham (President, Cardiff Chamber of Commerce); Sir Thomas Allen, J.P.(President, Newport Chamber of Commerce); Captain Geoffrey Crawshay (Assistant Commissioner for the Special Areas); Mr. G. H. Hall, M.P.; Mr. Stanley Evans, J.P. (Stipendiary Magistrate, Pontypridd); Councillor George Williams (Chairman, National Industrial Development Council of South Wales and Monmouthshire) and Mrs. Williams; Mr. John Rowland, C.B. (Chairman, Welsh Board of Health); Mr. Llewellyn Francis (Registrar, Cardiff County Court); Mr. F. H. Dauncey (Registrar, Newport County Court); Mr. P. F. Bailey (Inspector of Taxes); Mr. W. B. Davies (Chairman, Monmouthshire and South Wales Coalowners Association); Mr. Frank Edwards (President, Cardiff Chamber of Trade); Mr. M. P. Ferneyhough (President, Incorporated Accountants' District Society of North Staffordshire); Mr. H. Lyn Jones (Chairman, South Wales Coal Exporters' Association); Mr. J. W. Kinsman (Hon. Secretary, South Wales and Monmouthshire Society of Chartered Accountants); Mr. Vernon Lawrence (Clerk to the Monmouthshire County Council); Mr. W. E. Laburn (Inspector of Taxes); Mr. W. T. Manning (Hon. Secretary, Incorporated Accountants' District Society of Leicester); Mr. Stanley Meacock (President, South Wales and Monmouthshire Society of Chartered Accountants); Mr. J. W. D. Millward, F.C.I.S. (Chairman, Bristol Channel Association of Chartered Shipbrokers); Mr. Horace A. Morgan (General Secretary, Public Economy Association); Mr. D. Kenvyn Rees (Town Clerk, Cardiff); Mr. E. E. Rees (Chairman, Newport Shipowners' Association); Mr. G. Richards (Chairman, Rhymney Valley Water Board); Mr. R. J. Rimell (Hon. Secretary, Chartered Institute of Secretaries, South Wales and Monmouthshire Branch); Mr. Edward Roberts (Town Clerk, Merthyr); Mr. A. W. Sleeman (President, Swansea and South-West Wales District Society of Incorporated Accountants); Mr. F. A. Webber (President, West of England District Society of Incorporated Accountants); Mr. W. J. Williams, M.A. (Director of Education, Cardiff); and Mr. Percy H. Walker (Honorary Secretary) and Mrs. Walker.

LORD PORTAL, in proposing the toast of "The Society of Incorporated Accountants," said he regarded the profession of accountancy as the greatest in the world, or certainly one of the greatest. Everyone engaged in business had to look to the accountant for guidance and direction. At the same time, it seemed to be a happy profession, for the Incorporated Accountant had a very happy life when things were prosperous, while he also made a gain when his client went into liquidation. Some years ago he had been connected with businesses abroad and his business connections took him to many foreign countries. He had found that the one thing that the business and professional men in those nations most admired about the British system was the efficiency of the Incorporated and Chartered Accountants of Britain. For ten years he had been closely connected with business in Italy, and it was from the Italians themselves that a suggestion had come that it would be a good thing to have their difficulties looked after by a firm of British professional accountants. He felt particularly happy in being entrusted with the principal toast that night because he knew that everybody in South Wales, and more especially every Incorporated Accountant in the area, took a real interest in the difficulties that confronted South Wales, and no doubt sympathised with him as the representative of the most unpopular lady in the country—S.A.R.A. South Wales had been passing through most difficult times, but he sincerely hoped, and believed, that things had begun to turn. No individual, neither the Prime Minister nor the Chancellor of the Exchequer, no Opposition leader or party, tried to escape the idea that something should be done and must be done for South Wales. People had been kind enough to say that he had been able to do something. If he had it was because of the whole-hearted co-operation he had received from the Commissioner in London, from the Assistant Commissioner for South Wales and from many others who had devoted themselves to the cause of the area. No one individual or political party was going to solve the problems of South Wales. Whatever was done must be done as the result of united action to a common end. He had come back to South Wales as one of the trustees of the great patriot, Lord Nuffield, who was taking a special interest in the Special Areas, and he hoped that he might form a co-ordinating link between the various bodies and institutions which were interested. He believed that he was to be entrusted with the spending of extra money which the Government was putting into what he called "Pandora's Box" for work in the Special Areas. They had not been idle so far. Under the Nuffield Trust and the Special Areas Reconstruction Association they had a sum of only about £1,000,000 to handle, but since December they had spent something like £350,000. And some progress had been made in the last two or three months. Seven factories were to be put down in South Wales and they had something like a million and a half of capital that would be available to help these new industries. He was particularly happy that Merthyr, which had been so very seriously hit in the depression, was to have two of these new factories. One of those new industries was to be created by Major

Oscar Guest, whose family had been so closely associated with the town during its early days, and the other and bigger factory was largely due to another South Wales man who was also a great man in the City of London—Lord Camrose. The greatest tribute which people who had profited from the industry of works in South Wales in the past could pay in those difficult times—which were not so difficult for many parts of England—was to try to start an industry in the area in which the foundations of their fortunes had been laid. (Cheers.) There was just one warning he wanted to utter, and that was an anticipation of criticism. People might complain that schemes had been put forward and had not received support. There was no intention of backing any manufacturer or industry which would disappear in a year or so. That would leave the last condition worse than the first. They might be assured that if any scheme was turned down it would be for very good reasons.

Mr. R. WILSON BARTLETT (President of the Society of Incorporated Accountants), responding, reminded his audience that for two years he had been visiting every part of England and Ireland. It was particularly appropriate that almost the last function he would attend in his capacity as President of the Parent Society was in his own district of South Wales and Monmouthshire. As Lord Portal had said, they were all acutely interested in the special problems affecting South Wales. The slump period, the analysis of unemployment and the slow emergence of better conditions had shown that the Special Areas presented a problem of their own. At one time there was an idea that the special conditions in those areas were of a temporary character and that they would disappear with the return of a general improvement in trade. That idea had now gone and all in the Special Areas were particularly grateful to Lord Portal and all who had worked with him in bringing home to the nation and those responsible for its governance that the conditions prevailing in the Special Areas were the result of national and international disorders over which those within the areas had no control. Personally, he was proud and glad to know that many Incorporated Accountants were working whole-heartedly with the authorities and with such bodies as the Special Areas Reconstruction Association, the Industrial Development Council of South Wales and Monmouthshire, and all that were striving for rehabilitation of the areas. At the same time he could not help feeling that the White Paper recently issued by the Government on the subject was extremely disappointing and ultra-cautious. It was certainly not the fresh start which the Prime Minister had promised eighteen months before, when Mr. Baldwin had frankly admitted the failure and inadequacy of the original measures applied to the Special Areas. In particular, there was one question which had received inadequate attention at the hands of those in authority, and it was a question that went to the very foundations of the problem. The excess burden of public assistance on local authorities in the Special Areas should be lightened by some such means as the equalisation of the public assistance rate throughout the country. Public assistance falling largely on the local rates imposed an unfair and inequitable burden on those authorities in the Special Areas where revenue and assessments were already seriously reduced by bad industrial conditions. This financial burden created an atmosphere of depression, which was definitely discouraging to new industries that could come into the areas in which they were so badly needed. The rate for Public Assistance in a town like Bournemouth stood at 10½d. in the £, in the county of Surrey at 1s. 4d., Middlesex 1s. 5d., West Sussex 1s. 0d. and Kent 2s. 1½d., whereas in Monmouthshire it was 8s. 5½d., Durham 8s. 8d., Glamorgan 9s. 4d. and for the borough of Merthyr Tydfil 14s. 10½d. He knew that recently some attempt had been made to meet this unfair burden by a revision of the Block Grant, but he felt that the only way to equalise the burden was by making public assistance a direct charge on national funds and not one for local ratepayers, especially as local rates were the one form of public liability which took no account of ability to pay. The Society had 175 members in South Wales and about 160 students. In order to carry on the work in the area, and especially the work for and on behalf of the students, there was involved for the President and his District Committee a tremendous amount of educational and other work. On behalf of the Council he wanted to thank Mr. Hayes and his Committee and to congratulate them on the fine work they were doing. In particular, he felt he ought to acknowledge the wonderful work that was carried out on their behalf by Mr. Percy Walker. (Cheers.) Mr. Walker was to be nominated at their annual meeting which would take place in London the following month as one of the auditors of the Parent Society, and he was sure that all present would wish him success in that election. (Cheers.)

In presenting the awards to students, Mr. Wilson Bartlett paid a warm compliment to Mr. Roland John Alban on securing seventh place in the November Intermediate examination, and recalled that his father (Mr. F. J. Alban) had taken first place twenty-seven years ago. He asked Mr. F. J. Alban to hand the certificate to his son. (Cheers.) Mr. Bartlett also handed to the following students the prizes won by them in the Prize Essay Scheme organised by the Cardiff and Newport students:—Cardiff: Mr. A. Glen Pallot (first prize), Mr. W. R. Matthews (second prize), Mr. D. R. Carston (best contribution to the discussions). Newport: Mr. G. A. Hulbert and Mr. A. L. Varman (joint prizes).

Mr. C. T. STEPHENS (Vice-President of the District Society) proposed the toast of "Our Civic Governors." He said it was sometimes asserted that accountants did not take the part in public life which they ought to take. In Newport they were proud of the fact that three accountants sat on the Borough Council, and they were especially proud that their immediate Past President was Chairman of the Finance Committee.

The LORD MAYOR OF CARDIFF (Alderman H. Hiles), responding, said he had been delighted to hear that night the unanimity with which men of all parties were facing the problems of the area. So far as the civic governors of the area were concerned he could bear testimony to the fact that throughout the district they were animated by the one aim of whole-heartedly helping South Wales, and in that task neither party nor prejudice played any part. They all felt that something more was needed. That something must be of greater importance than munitions factories, which were of a purely temporary nature. They wanted to see industries flourishing which would be of a lasting character and which would give opportunities and openings to the youth of the areas for whom there was at the moment no better outlook than migration. The President had called attention to the unfairness of the burden of the public assistance rates which fell upon the local government bodies in the Special Areas, but that was only one of the many anomalies with which they were faced. It cost from £250 to £300 to educate a child, yet at the moment the only result for that expenditure was that the child had to be sent out of the district if he or she was to have any opportunity of advancement and useful work. In this matter of doing all they could for the advancement of industrial

conditions the coal valleys and seaboard authorities were at one. Whatever was done must be done for the whole coalfields, for until they were on their feet the ports could not be prosperous.

The MAYOR OF NEWPORT (Major I. Cameron Vincent), also responding to the toast, said that already there was talk that after a period of munition-making there was going to be another great slump in the country, and he advocated that as a precaution steps should be taken now to ensure that the purchasing power of the people was maintained. In return for such agreements the trades unions ought to agree to a period of industrial peace free from the threat of strikes and lock-outs. That was a form of co-operation which, with the aid of S.A.R.A. and the other organisations at work, would do much to help South Wales out of its difficulties. That was a problem which did not belong to the Government or anybody in London, but which South Wales could tackle for itself and which, once brought about, would do much to convince people who had capital and were prepared to co-operate that they would receive here as fair treatment as they had been finding on the South Coast and elsewhere. If they could prove to those capitalists who already sympathised with the condition of the area that they would get a fair day's work for a fair day's pay, they would get them down in South Wales.

The PRESIDENT of the District Society (Mr. Percy A. Hayes) proposed the toast of "Our Guests."

Mr. ARTHUR JENKINS, M.P., and Mr. STANLEY EVANS, M.A., J.P. (Stipendiary Magistrate for Pontypridd) responded. Mr. Jenkins said the fault in the past had been that the industries of South Wales were not diversified enough. In the future they must not repeat that mistake; there must be no more reliance on one or two industries. He paid a warm tribute to the work of the accountants of South Wales, with whom he had been engaged so closely in local government work. Two of their own members, in particular, had rendered yeoman service during the past few years—Mr. P. H. Stafford and Mr. F. J. Alban—and it was largely due to their work and that of other Incorporated Accountants in the area that the revision of the Block Grants had taken place. In the past year that had meant a saving of a quarter of a million pounds to South Wales.

Obituary.

HARRY MAYNARD CARTER.

The Society of Incorporated Accountants and Auditors has lost one of its few remaining original members by the death on March 24th of Mr. Harry Maynard Carter, F.S.A.A., at the age of 80. Until his retirement ten years ago Mr. Carter was a partner in the firm of Carter, Son and White, carrying on the practice established by his father in Basinghall Street in 1874. Mr. Carter was very well known in Croydon, where he lived for over seventy years. He was a member of the choir at the Old Parish Church, Croydon, for many years, and he often exhibited his own paintings at the annual exhibitions of the Croydon Art Society. He took part in many philanthropic activities.

CORONATION FLOODLIGHTING.

In the evening of Coronation Day and during Coronation week Incorporated Accountants' Hall will be illuminated by floodlighting.

Methods of Fraud.

A LECTURE delivered to the Incorporated Accountant's Students' Society of London and District by

MR. SYDNEY M. CALDWELL, A.C.A.

The chair was occupied by Mr. H. E. COLESWORTHY, F.S.A.A.

Mr. CALDWELL said: The annals of fraud contain many interesting cases, and I have thought that a knowledge of the different methods by which fraud is carried out may be of assistance to the profession in preventing a recurrence of the notable frauds of the past. Fraud embraces an extremely wide field, and if I am to keep within my time limit I must confine myself to fraud as applied to accounts and commerce. I propose to deal with the subject under three headings:—

1. Defalcations involving the misappropriation of cash, stock or other assets.
2. Fraudulent manipulation of the accounts of a business without direct misappropriation of assets.
3. Those frauds which, although unconnected with accountancy as such, are of interest to the profession.

We have got to remember that any fraud is usually designed with the primary object of bringing some financial benefit to the originator of it. The result is, under any of the above headings, much the same; that is to say, the defrauder makes something at the expense of the business. It is the methods by which he attempts to cover up his frauds which I am going to analyse.

DEFALCATIONS

The first system, that of misappropriation of assets, may be worked in various ways, according to the type of asset to be misappropriated. Cash is the most favoured asset for this purpose, the method if disguising the misappropriation being either to enter on the debit side less cash that has actually been received, or to enter on the credit side more cash than has actually been expended.

Misappropriation of receipts may be covered up by entering on the counterfoil receipt a smaller amount of cash, entering a corresponding figure in the cash book and crediting such amount to the customer's account in the ledger in the usual way. The deficiency is then made good by passing a false credit to the customer's account, so enabling it to balance. The auditor should guard against this type of fraud by making quite sure that all credit notes and cash discounts are properly authorised by some responsible official who has nothing to do with the receipt or payment of cash.

False expenditure of cash may be covered up in a variety of ways, wages being a very useful item for this purpose. Some years ago the Mersey Docks and Harbour Board were the victims of a very ingenious fraud, in which the foreman of a gang of dock labourers, a cashier in the office and a clerk participated. The Dock Board's system was that the wages sheets were made up in the office, checked and cash paid by the cashier in the presence of a responsible official from the Dock Board, whose duty it was to see that every pay envelope was claimed by a workman. This was thought to be fraud-proof, but the conspirators hit on the idea of inserting false names in the wages sheets and hoodwinked the responsible official by hiring dockside loafers to come up to the pay office and collect the corresponding pay envelopes. These envelopes were afterwards recovered by the conspirators, probably in exchange for a pint of beer, and the net proceeds divided among the three men. Such a fraud is extremely difficult to detect, and this one only came to light because one of the three became panic-stricken and confessed his share in the fraud. The professional

auditor could not, I think, be held guilty of negligence if he failed to detect such an ingenious fraud, since he is entitled to rely on trusted officials of a company.

A case which came up for trial at the Liverpool Assizes illustrates another type of wages fraud—the old dodge of overcasting the wages book. The method is, briefly, to overcast the wages book by, say, £2, draw a cheque for the resulting false total, pay the wages in the ordinary way and keep the surplus cash resulting from the overcasting of the total. In this Liverpool case the audit clerk was privy to the fraud and ticked the additions as correct, receiving as reward a proportion of the misappropriated cash. This case illustrates the danger of allowing a clerk to become too friendly with a client's staff, and it is advisable to change the clerks on an audit from time to time.

Another method of covering up false expenditure is the alteration of vouchers for payments, usually by the insertion of the figure 1 in front of an existing figure, the excess being transferred from the firm's cash box to the cashier's pocket. This is rather crude, and any auditor who " keeps his eyes skinned " should notice the alteration, unless, of course, the cashier is a past master in the art of forgery.

An auditor should always be on his guard in cases where the balance of cash in hand seems unnecessarily large for the business, since it is possible that, for the major portion of the year, some of this balance may be in the cashier's pocket instead of in the firm's cash box. In the case of *The London Oil Storage Co.* v. *Seear, Hasluck & Co.*, where auditors were sued for negligence, it was shown that the balance of cash in hand as per the cash book was about £700, but in fact the actual cash balance was only £30, the difference having been misappropriated by the secretary, who wrote up the cash book. The auditors' clerk did not count the cash in hand, but merely referred to the cash book to see that the amount there agreed with the amount shown in the balance sheet. The auditor was held to be guilty of negligence, but the jury awarded the plaintiffs only £5 5s. damages, being of the opinion that the directors had been guilty of gross negligence in allowing such a large balance of cash to be retained. It is an auditor's plain duty to count the cash in hand, no matter whether the balance be large or small, and as a practical point it is advisable, when attending the client's premises for this purpose, to count the actual cash first and to consult the cash book afterwards, since if the cash book is consulted first this would give the fraudulent cashier a few minutes to borrow sufficient money to cover up his deficiency.

The case of *The Astrachan Steamship Company Limited and others* v. *Harmood Banner & Son* was rather more subtle. The plaintiffs were an associated group of separate companies, each owning one ship, and Harmood Banner's did the audit of all the companies. These companies shared a common office and the same staff. The auditors completed the audit of company No. 1, and agreed the cash in hand with the cash book of that company. They then proceeded to do the audit of company No. 2, and counted their cash in hand. This went on until the audits of the group had been completed. Actually, what had happened was that the same cash had been presented to the auditors for counting time after time, only one cash balance being in existence instead of several, the remainder having been misappropriated by the cashier. The action was ultimately settled out of Court in favour of the plaintiffs, and it would therefore seem to be the duty of the auditor in such a case to count all cash balances at the same time.

Different crooks have different methods, and one method much favoured by those who have the custody of money at their home is to dip their hands into the cash box and then to stage a faked robbery by breaking a few windows and turning out the contents of a desk on to the floor, with other artistic details to make it appear as if a common thief had been at work. This method has been tried by treasurers of slate clubs, collecting agents of insurance companies, branch secretaries of trade unions and similar gentry. They have, however, not met with any great success. Cases of this sort appear now and again at the local police courts, an indication that somebody has been caught working the old trick again.

One well known accountant, telling of various frauds which he had been called in to investigate, found when engaged on the accounts of a firm of stockbrokers that the amounts charged against profits in respect of contract stamps and registration fees seemed rather heavy. In the ordinary course these charges are payable by the client, but in the rush of business it sometimes happens that mistakes are made, and it is hardly worth while risking the goodwill of a client by asking him for a few shillings which should have been charged to him at some previous date, and a small debit to profit and loss account is to be expected now and then. The fees clerk had taken advantage of this and commenced with the comparatively modest plan of putting through his books an occasional 2s. 6d. for a registration fee not in fact payable and pocketing the money. He soon became bolder and went for it in a wholesale way, charging stamp duties on bearer bond transactions, entering debits for the same transaction twice, and the like. In a few weeks he had obtained the best part of £200. The fraud would never have been discovered at all if it had not been that a boom period on the Stock Exchange necessitated the firm of stockbrokers requesting their accountants to assist in writing up the books.

Fictitious purchases have also been used to cover up misappropriations. The method is for the clerk or cashier of a business to persuade a person who regularly supplies goods to the business to send in invoices for fictitious purchases. These are paid by the fraudulent cashier and a receipt obtained for the money. The amount so obtained is then divided between the cashier and the tradesman. Such a fraud may be checked by a proper system of having all invoices passed for payment and initialled by some responsible official. This type of fraud has been practised by clerks in the employ of various municipal corporations and other public bodies.

The case of *The City Equitable Fire Insurance Co., Ltd.*, whose chairman was Gerard Lee Bevan, has some of the elements of misappropriation of cash and some elements of the manipulation of accounts. Bevan, who was sentenced to seven years' penal servitude for his sins, was also the senior partner of Ellis & Co., the stockbrokers to the company, who were at all material times heavily indebted to the City Equitable. Bevan resorted to the process of " window dressing," and much larger sums of money belonging to the City Equitable Company were in the hands of Ellis & Co. at the date of each balance sheet than was shown by the City Equitable's books. This operation was effected by the purchase of Treasury Bonds by Ellis & Co., immediately before, and a re-sale immediately after the date of each balance sheet. In fact these securities were never in the hands of Ellis & Co., but were retained by the sellers as security for loans against them to Ellis & Co. Bought and sold notes were issued for these transactions by Ellis & Co., who also certified that they held the securities at the date of the balance sheet, and this certificate was accepted by the company's auditors. The trouble was that Ellis & Co. had pledged the City Equitable's securities to their own

private creditors. The auditors of the City Equitable Co. were subsequently sued for negligence, and the remarks of Mr. Justice Romer on the subject of the inspection of securities are of importance. In the course of his judgment, he said: "An auditor is not in my judgment ever justified in omitting to make personal inspection of securities that are in the custody of a person or company with whom it is not proper that they should be left. Whenever such personal inspection is practicable, and whenever an auditor discovers that securities of the company are not in proper custody, it is his duty to require that the matter be put right at once, or, if his requirement be not complied with, to report the fact to the shareholders, and this whether he can or cannot make a personal inspection. The securities, retained in the hands of Ellis & Co. for periods long beyond the few hours in which securities must necessarily be from time to time in the possession of the company's stockbrokers, were not in proper custody. That Ellis & Co. were at all material times regarded, and reasonably regarded, by Mr. Lepine (the auditor) as a firm of the highest integrity and financial standing is not to the point. A company's brokers are not the proper people to have the custody of its securities, however respectable and responsible those brokers may be. There are, of course, occasions when, for short periods, securities must of necessity be left with the brokers, but the moment the necessity ceases the securities should be lodged in the company's strong-room or with its bank, or placed in other proper and usual safe keeping. In my judgment, not only did Mr. Lepine commit a breach of his duty in accepting, as he did from time to time, the certificate of Ellis & Co. that they held large blocks of the company's securities, but he also committed a breach of his duty in not either insisting upon those securities being put in proper custody or in reporting the matter to the shareholders. This was negligence. . . ."

Attempts have also been made to cover up the improper pledging of securities by producing to the auditor only part of the firm's securities for his inspection; then, when he has inspected these, the fraudulent official attempted to persuade the auditor to go for his lunch, promising to have the rest of the securities ready for him when he returned, the idea being that whilst the auditor was away the official could take the securities already inspected and exchange them for those improperly pledged, and when the auditor returned from his lunch he was to find the rest of the securities waiting for him. The scheme broke down because the auditor refused to go for his lunch until he had finished the inspection of the securities, and the whole fraud came to light. The amount borrowed on the strength of the securities had, of course, been misappropriated by the official.

MANIPULATION OF ACCOUNTS.

Turning now from direct misappropriation of assets to the manipulation of accounts, the motive for manipulation is to overstate the profits of the business. This may be done for a variety of reasons; for instance, to keep up the price of the shares on the Stock Exchange, or to ensure that creditors, seeing the business to be profitable, will not press for payment. If the managing director, manager or other high official gets a commission on the profits as part of his remuneration, there is always the risk that he may manipulate the accounts and so draw his commission on inflated profits. The vendor of a business may also be tempted to inflate the profits so as to obtain an enhanced price.

Profits may be inflated in a variety of ways, either by increasing items on the credit side, such as sales or closing stock, or else by decreasing items on the debit side, such as purchases or expenses. Inflation of sales was resorted to by Mr. Brandreth, the chairman of the Ner-Sag Company, and of its subsidiary, Ner-Sag (Overseas), Limited. The method was to put through the books of the Ner-Sag Company fictitious sales of spring mattresses to Ner-Sag (Overseas), Limited, resulting in an enormous profit to the Ner-Sag Company. A set of unaudited accounts was published on this basis, as a result of which the Ner-Sag Company's 10s. shares shot up on the Stock Exchange to over £5. Mr. Brandreth sold out his holding in the Ner-Sag Company at a very handsome profit, but he overlooked the fact that sect. 84 of the Larceny Act, 1861, makes it an offence for a director of a company to publish or circulate any written statement or account, knowing it to be false in any material particular, with intent to defraud any member, shareholder or creditor. This trifling oversight cost him a term of penal servitude.

Inflation of the value of stock was resorted to by a high official of the Kingston Cotton Mill. Stock inflation is a snowball scheme, since the closing stock of one period is the opening stock of the next, and while the first period in which inflation takes place will reap the benefit, the next financial period will be correspondingly handicapped. If the profits are to be overstated in subsequent years, it follows that the closing stock must be overstated, not only by the original amount, but also by the additional amount by which it is desired to overstate subsequent profits. The auditors of the Kingston Cotton Mill were subsequently sued for negligence, but it was held that the auditor is entitled to accept the certificate of a responsible official of the company as to the valuation of stock. This was confirmed in the later case of *Henry Squire, Cash Chemist, Limited* v. *Ball, Baker & Co.*, where it was held that the auditor could accept the stock certificate from a responsible official even though, if the auditor had compared the stock figure with that of previous years, his suspicions would probably have been aroused.

Purchases were understated in the case of the *Irish Woollen Company*, the method being to hold over purchase invoices for the last few weeks of the financial period and to put them through in the succeeding period. Such a scheme is, like the inflation of stock, of a snowball nature, the trading result of the succeeding period being prejudiced by debiting last year's purchases. The auditors were held guilty of negligence, since they had not noticed when auditing the account of the succeeding period that some of the invoices bore last year's date. Moral: Always look at the date of an invoice!

The case of *Whittaker Wright and The London Globe Finance Corporation Limited*, caused quite a sensation when it came up for trial. The company was formed, according to its Memorandum of Association, "to engage in all kinds of financial operations," and in the light of subsequent events this object was certainly carried out. The company was an amalgamation of two existing companies, each with a capital of £195,000 in ordinary shares and £5,000 in deferred shares. The London Globe Company issued paid-up shares of £1,600,000 in exchange for £400,000 total paid-up capital of these two companies. Of this amount £990,000 was issued to the ordinary shareholders of the old company in exchange for their previous holding of £390,000, and £610,000 was issued to the holders of deferred shares. The deferred shares in the two old companies had been issued to Mr. Whittaker Wright in consideration of promotion services and for options on certain mining rights. The result of the formation of the London Globe Company was that Mr. Whittaker Wright converted his old deferred shares into shares in the new company worth sixty-one

times the value of his original holding. The financial operations were entirely in the hands of Mr. Whittaker Wright. Subsequently, as an illustration of the type of transaction entered into, the London Globe Company promoted the British America Corporation Limited, receiving £500,000 in paid-up shares in exchange for certain rights which the London Globe Company had themselves purchased thirteen days earlier for £100,000. The result was that the London Globe Company took credit for a profit of £400,000. The property transferred consisted merely of options, no substantial assets passing. This transaction was only one of a series, and when the crash came it was found that £5,000,000 worth of capital subscribed by the public had been lost, in addition to liabilities to creditors of something like £3,000,000. The frauds were covered up for a time by making up the balance sheets of the various companies at different dates, the cash at bank being increased by cheques being received from the other companies a day or two previous to the date of the balance sheet, these cheques being shown as cash at bank in the balance sheet of the receiving company. Immediately the date of the balance sheet had passed the transaction was reversed. A similar procedure was adopted at the date of the balance sheet of each of the other companies. It was only a matter of time before such gigantic manipulations came to light, and as a result Mr. Whittaker Wright was indicted on twenty-six counts, and after a trial lasting several days he was found guilty on all counts and sentenced to seven years' penal servitude, the maximum penalty provided by the Larceny Act, 1861.

Another example of falsification of accounts is provided by the *Farrow's Bank* case, where balance sheets and accounts were published and advertised every year, being certified by the auditors with a clean audit certificate. The position of the bank was falsely shown as being in a state of continuous prosperity, large fictitious profits being shown as a result of the bank's trading. Actually, the only year to show a profit was the first year, and after that time the true position of the bank became steadily worse. By means of these false published accounts the public were induced to entrust money to the bank.

An interesting case within my knowledge which involved the falsification of the accounts of the business had for its motive the defrauding of the Commissioners of Inland Revenue. The business was that of a fruit importer, of which Mr. X was the sole proprietor. The business consisted of selling shipments of fruit from Spain and the Canary Islands on a consignment basis. When a shipment was sold an account sales was made out and an ordinary cheque (not a banker's draft) remitted for the net proceeds. Under the system of book-keeping, these consignments were entered up as purchases. When the audit was started the auditors proceeded to vouch the purchase journal with the account sales, and after checking the cash book with the bank pass book, asked for the paid cheques as vouchers, since it is a physical impossibility to get a receipt from a Spaniard. Mr. X said: "Oh, I can't be bothered to get the cheques from the bank; surely the name on the payment side of the pass book could be compared with the credit side of the cash book, and that ought to be enough evidence of payment for anybody." The auditors, however, insisted, and after a great deal of trouble got Mr. X's permission to get the paid cheques from the bank. When the cheques were vouched with the cash book, they found that some of these cheques, made payable to Don José So-and-So or Alvarado What's-His-Name, bore in the corner the words: "Please pay cash to bearer," and the initials of Mr. X. On enquiry being made it was found that some fictitious account sales had been made out, purporting to record transactions with fruit growers with whom Mr. X habitually dealt. The cheques had been made out by Mr. X in favour of these Spaniards, and he had then written the words: "Please pay cash to bearer" across the face of them, and taken the cheques round to the bank and collected the money himself. The cheques had been entered up by the bank in the pass book as having been paid to the payees named thereon, *i.e.*, Don José So-and-So, Alvarado What's-His-Name, &c. There was no question of the business having been defrauded, since Mr. X was the sole proprietor, but the net effect would have been to have charged up the proprietor's drawings as purchases, so reducing the profits of the business assessable to income tax. The auditors, fortunately, discovered these manipulations the first year they were started and charged the amount involved to Mr. X's drawings account and not to purchases. Incidentally, Mr. X received a rather severe lecture from his auditor and promised to be a good boy in the future. The accounts which were later submitted to the Inspector of Taxes showed the true position, and the Inland Revenue are not aware to this day how near a certain citizen came to defrauding them.

Another interesting case was heard in the Courts under the name of *Dunford* v. *W. F. Ewbank & Co.* Here Dunford had concealed certain moneys from the defendants, a firm of Chartered Accountants, with the result that certain income was not disclosed to the Inland Revenue. This concealment of income is a common method of defrauding the Inland Revenue and is extremely difficult to detect. The Inland Revenue eventually discovered these omissions and Dunford had to pay £12,000 arrears of income tax and penalties. This action at the Assizes alleged negligence against the auditors for not having discovered the concealment themselves, thereby saving Dunford from paying penalties. The plaintiff did not recover damages.

Large-Scale Frauds on Banks.

The third and most interesting group of frauds contains many well known cases. A fraud on the Bank of Liverpool perpetrated by a clerk in their employ named Goudie was most ingenious. Goudie was a ledger clerk getting a salary of £150 per annum, and commenced the fraud in 1898 and managed to conceal it until November, 1901. A remarkable feature of the case was that Goudie's frauds were first discovered not by his employers, but by two unscrupulous persons who terrified him into more extensive depredations to satisfy their greed. Then other men, abler and more greedy, had ferreted out the cause of the sudden affluence of the former two, and themselves fastened on the unfortunate Goudie, who was driven by two sets of merciless taskmasters, acting independently, into committing for their benefit frauds on a scale hitherto unknown and deemed impossible. All his skill and ingenuity in the commission and cloaking of his crime were exercised to the full, not for his own benefit, but for that of his blackmailers, who thought that they had so arranged matters that, when the inevitable discovery came, they would be able to escape all consequences, leaving their unfortunate tool to his fate.

Goudie was in charge of the H. to K. ledger, which included the account of Mr. Hudson, of Hudson's Soap, through which large sums of money were continually passing. At the time of the frauds, when a cheque was paid an entry was made in a journal, and the journal and the cheque were taken to the ledger clerk concerned, who marked the journal, took the cheque, which went

on to other officials, and made the necessary entries in the ledger.

Goudie's method was to fill up a cheque and forge Mr. Hudson's name. The cheque was duly presented by his blackmailing accomplices and paid. If the cheque had gone through the ordinary routine, the fraud would not have remained undiscovered for a single day. It was duly entered in the journal and with that book came, in due course, into Goudie's hands. Then he destroyed the cheque, and marked the journal as if the ledger had been duly posted, but carefully omitted to make any entry in the ledger, where Mr. Hudson's account always showed actual drawings and payments in. Goudie managed to evade discovery for the amazing time of three years by a system of false entries and suspense accounts, coupled with the fact that it was part of his duty to assist the auditors, which was an obviously unsatisfactory and dangerous arrangement.

Goudie's activities were eventually discovered by some members of the bookmaking fraternity, to whom he owed money. Under threat of exposure he was forced to commit bigger and bigger frauds for the benefit of these harpies. Later, a second race gang got to hear of the affair, and forced Goudie to forge further cheques for their benefit. In the final three weeks before the discovery of the frauds, they extracted £91,000 from the bank. In all, about £160,000 was stolen in this way between 1898 and 1901. A few days afterwards the inevitable discovery was made, and the hue and cry resulted in the arrest and subsequent conviction of Goudie and three of the race gang. Two others fled the country and were never brought to justice. Goudie was sentenced to ten years penal servitude and the others to long terms of varying amount. The auditors escaped responsibility for not having discovered the frauds, since it was found that the bank's system of keeping their accounts was far from satisfactory. Needless to say, the system of internal check was later overhauled and reorganised.

Talking of banks brings to mind the case of the man who opened a banking account and gradually built up his credit balance over a period until it stood at several thousand pounds. His references (forged) and general respectability seemed to be unquestionable. One day he went in and asked to see the manager, and explained to him that he was about to conclude an important deal with a very influential business man. He informed the manager that this deal involved the payment of a large sum of money and that he was going to give an open cheque for several thousand pounds (slightly less than the balance standing to his credit at the bank) in favour of an elderly gentleman with a beard, who would probably present the cheque for payment about 11 o'clock the following morning. He impressed on the manager that he would like this cheque to be paid in cash over the counter without any hesitation on the part of the teller, as the gentleman with the beard might have doubts as to his financial standing if the teller went to consult the ledger before paying the cheque. The manager agreed to have all the tellers informed of the balance standing to his credit at the opening of business on the following morning. About 11 o'clock next morning, when the bank was full of people, several elderly gentlemen, each complete with beard, walked into the bank by different doors and presented open cheques for large amounts drawn on our friend's account. Each of these cheques was paid without hesitation by different tellers, who of course thought, " Ah, here is Mr. So-and-So's eccentric friend come to collect his money." The result was that Mr. So-and-So's account was so seriously overdrawn after all these cheques had been paid that he and his accomplices were never heard of again.

Another gentleman who considered banks to be easy game opened an account with a very small amount, and after various small amounts had been paid in and withdrawn, got down to business. He paid in at one end of the bank counter a large amount in notes, while at the other end of the counter a few minutes later his accomplice presented an open cheque for a similar amount. The teller to whom the cheque was presented went to consult the ledger and found only a small balance standing to the credit of the account, since the cash which had just been paid in had not been credited. Payment of the cheque was refused and the customer waxed very indignant at this and eventually obtained substantial compensation from the bank for damage to his financial reputation consequent upon the dishonour of his cheque.

Frauds Involving Unauthorised Issue of Valuable Security.

The last examples of fraud, to which I have given the rather paradoxical name of " genuine forgeries," are the *Hatry* case and the Marang frauds on the Bank of Portugal. The methods employed in these two cases were much the same. Hatry, through his company, Corporation & General Securities Limited, was entrusted with the issue to the public of perfectly genuine loans on behalf of various municipal corporations. He also had charge of the issue of the scrip certificates to the subscribers. He ordered an excessive supply of these certificates from the printer and affixed the Corporation's seal, of which he had possession, to these surplus certificates. He then proceeded to sell on the Stock Exchange blocks of these Corporation loans, delivering to the purchasers the certificates which he had prepared. These certificates could hardly be described as forgeries, since they were printed from the same plates as the certificates issued to *bona fide* bond-holders. The amount involved ran into millions of pounds and a financial crisis of the first magnitude was only averted by the Stock Exchange opening a fund to compensate the holders of these unauthorised certificates for their loss. Hatry, together with his accomplices, was tried at the Old Bailey and sentenced to 14 years penal servitude.

In the *Bank of Portugal* case, a man named Marang called on Messrs. Waterlow, of London, the official printers to the Bank or Portugal, and after producing forged letters of introduction, persuaded them to print a series of " Vasco da Gama " banknotes, using the Bank of Portugal's plates which were in their possession. These notes were taken to Portugal and put into circulation, principally through a bank which Marang and his accomplices had promoted for the purpose. The fraud was discovered through the police finding out that a certain shopkeeper (an accomplice of Marang's) always seemed to have a supply of brand new " Vasco da Gama " notes. The value of the notes actually issued to the Portuguese public by Marang was over one million pounds sterling. When the frauds eventually came to light, something like a panic reigned in Portugal, and the Bank of Portugal took the very wise step of honouring all " Vasco da Gama " notes, genuine and spurious, by calling them all in and issuing in exchange fresh notes of a different design. Subsequently the Bank of Portugal took an action for negligence against Messrs. Waterlow and, after the case had gone to the House of Lords, recovered damages of over £600,000.

There are many more types of fraud of one sort and another with which I have not time to deal, but I hope that this outline of some of the more ingenious cases will impress on you, as auditors, that a little inquiry never

did any harm, and that the immortal W. S. Gilbert knew what he was talking about when he wrote :—

Things are seldom what they seem,
Skim milk masquerades as cream ;
Highlows pass as patent leathers ;
Jackdaws strut in peacock's feathers.

. . . . . .

Gild the farthing as you will,
It remains a farthing still.

Reviews.

Constructing Accounts from Deficient Records. *By W. J. Back, Incorporated Accountant. London : Sir Isaac Pitman & Sons, Ltd., Parker Street, Kingsway, W.C.* (84 *pp. Price* 5*s. net.*)

Success in preparing accounts from incomplete records requires experience as well as care and skill—qualifications which are possessed by the author of this book. The substance of Mr. Back's book was originally delivered as a lecture at the Incorporated Accountants' Cambridge Course, but the text has been amplified in many respects and a useful appendix of forms and examples has been added. Commencing with an explanation of the legal position, Mr. Back proceeds to give an outline of general procedure with practical illustrations, and calls attention to matters requiring special attention. A further chapter is devoted to reports to clients, and this is followed by advice as to so arranging the records that complete and reliable accounts can be prepared in the future with a minimum of difficulty. As usual, Mr. Back's explanations are clear and precise, and the illustrations and rulings form a very useful supplement.

Examination Guide for the Commercial Student. *2nd Edition. By Albert Crew, Barrister-at-Law. London : Gee & Co. (Publishers), Ltd., 6, Kirby Street, E.C.*1. (44 *pp. Price* 3*s.* 6*d. net.*)

In this little book examination students are tendered useful advice. Following some observations on examinations in general, and especially from the student's point of view, the various methods of preparation are discussed and advice given as to conduct and procedure in the examination room, together with hints as to common mistakes in Commercial Law examinations. Candidates who are preparing for examinations will find Mr. Crew's advice well worthy of careful attention.

The "Long Range" Interest Tables. *By J. Gall Inglis, F.R.S.E. Edinburgh : Gall & Inglis,* 12, *Newington Road ; and London :* 13, *Henrietta Street, W.C.*2. (*Price* 8*s.* 6*d. net.*)

The interest tables contained in this book cover a wide range from 1 per cent. up to 7 per cent., with numerous intermediate rates, the number of different rates being as many as 24. Every $\frac{1}{4}$ per cent. is given from 1 to $5\frac{1}{2}$ per cent., and then every $\frac{1}{2}$ up to 7 per cent., whilst the $2\frac{3}{4}$ per cent. and $2\frac{5}{8}$ per cent. rates are also included.

Flexible Budgeting and Control. *By D. J. Garden, M.A., B.Com. London : MacDonald & Evans,* 8, *John Street, Bedford Row, W.C.*1. (246 *pp. Price* 7*s.* 6*d. net.*)

In this work Mr. Garden has set himself the task of investigating recent tendencies in business management, in the course of which he examines both principles and technique, his object being to facilitate the adoption of practical methods of control which meet the widely differing needs of individual concerns and at the same time conform to sound principles. In doing so he discusses the sales budget, the production budget, and the financial budget, and follows with observations on special budgeting problems. A valuable feature of the book is the number of forms and rulings with which the text is interspersed. The work, which is introduced by an appreciative foreword by Sir Josiah Stamp, gives evidence of careful thought as well as extensive knowledge.

The Theory of Forward Exchange. *By Paul Einzig. London : Macmillan & Co., Ltd., St. Martin's Street, W.C.*2. (520 *pp. Price* 21*s. net.*)

The introductory part of this book explains the scope of the work and gives reasons why forward exchange should be studied. The author then proceeds to deal with the evolution and development of the system, the organisation and technique of the forward exchange market, and its relation to trading transactions. The theory of forward exchange is considered at great length, as well as the policy and procedure of the central banks in relation thereto. The appendix contains a table of the forward rates from 1921 to 1936, and tables of bank rate parities, discount rate parities and call money rate parities. The text of the book is also interspersed with charts relating to the forward rate and interest parities in relation to the Dollar, Franc and Reichsmark.

District Societies of Incorporated Accountants.

BELFAST.

ANNUAL MEETING

The annual meeting of the Incorporated Accountants' Belfast and District Society was held on April 26th. The President, Mr. J. S. White, was in the chair, and there was a good attendance of members.

The Chairman said that the various meetings held during the year were well attended. He referred to the arrangements made for the Conference of Incorporated Accountants to be held in Belfast from June 23rd to 26th.

The following office-bearers and Committee were elected: President : Mr. J. S. White ; Vice-President, Mr. J. H. Allen ; Committee : Mr. F. Allen, Mr. H. Anderson, Mr. E. A. Anderson, Mr. James Baird, Mr. Robert Bell, Mr. D. T. Boyd, Mr. Norman Booth, Mr. James Boyd, Mr. Samuel Boyle, Mr. A. S. Courtney, Mr. W. Keith, Mr. J. S. Lewis, Mr. J. D. Thompson and Mr. J. A. Winnington ; Hon. Secretary and Treasurer : Mr. J. McMillan ; Hon. Auditor : Mr. C. Magee.

Annual Report.

The following is the report for the year ended March 31st, 1937 :—

The total number of members is 200, consisting of 17 Fellows, 76 Associates and 107 Students, as compared with a total membership of 198 last year.

EXAMINATIONS.

The examinations of the Society of Incorporated Accountants were held in May and November in the Municipal College of Technology, Belfast. The results were as follows :—

	Final.	*Intermediate.*	*Preliminary.*
Passed	2	9	8
Failed	3	23	11
Total ..	5	32	19

STUDENTS' SECTION.

A most successful dance was held on January 15th, 1937, under the auspices of the Students' Section.

MEETINGS.

The following meetings were held during the year :—

October 30th. Students' meeting. "A Student's Programme," by Mr. R. Wilson Bartlett, F.S.A.A.

November 23rd. "The Future of the Accountancy Profession," by Mr. W. Bertram Nelson, F.S.A.A.

November 23rd. Students' meeting. "Incomplete Records," by Mr. W. Bertram Nelson, F.S.A.A.

January 4th. "Wills," by Mr. D. J. Watters.
January 4th. Students' meeting. "Examination Papers," by Mr. Robert Bell, F.S.A.A.
February 4th. "Accountants in Public Life," by Mr. C. M. Dolby, F.S.A.A.
February 4th. Students' meeting. "Investigations," by Mr. C. M. Dolby, F.S.A.A.
March 4th. Address by Sir Ernest Herdman, D.L., Chairman of the Belfast Harbour Commissioners.
March 10th. "Income Tax," by Mr. H. McMillan, A.S.A.A.

GOLF COMPETITIONS.

The annual golf competition for the Booth Cup was held at Donaghadee on May 18th, 1936. The Booth Cup and prize were won by Mr. W. S. Stevenson, the runner-up prize being won by Mr. W. Dunn. In the afternoon an 18-hole consolation stroke was held, the winners being Mr. H. Andison and Mr. R. W. McBride. The prizes were presented by the President and the Vice-President.

On September 8th, 1936, a match was played at Donaghadee between teams representing his Majesty's Inspectors of Taxes and the members of the Society.

The autumnal golf competition for the Allen Cup was held at Belvoir Park on September 30th, 1936, the winner being Mr. W. S. Stevenson, runners-up Mr. E. C. Comerton and Mr. W. J. M. Stewart.

COMMITTEE.

In accordance with the rules, one-third of the elected members of the Committee retire. The members retiring are: Mr. J. H. Allen, Mr. A. S. Courtney, Mr. W. Keith, Mr. J. S. Lewis and Mr. J. D. Thompson, who are eligible and offer themselves for re-election.

Mr. J. D. Thompson continues to act as the Society's representative on the Chamber of Commerce, and Mr. J. A. Winnington represents the Society on the Court of Referees of the Ministry of Labour.

CONFERENCE.

The Council of the Society have accepted the invitation from the Committee to hold a Conference in Belfast from June 23rd to 26th, 1937. Through the kindness of the Senate of the Queen's University, the meetings will be held at the University. The following functions have been arranged:—

Reception and ball at the City Hall by invitation of the Lord Mayor and Lady Mayoress.
Garden party at Stormont by invitation of the Government of Northern Ireland.
Visit to Belfast Harbour by invitation of the Belfast Harbour Commissioners.
Visit to Portrush and Giant's Causeway and other places of interest in the North of Ireland.

It is hoped that all members of the Society resident in Northern Ireland will attend and support the Conference.

DEVON AND CORNWALL.

Annual Report.

The Committee have pleasure in presenting the Report of the work of this District Society for the year ended March 31st, 1937.

The present membership is 137, consisting of 27 Fellows, 60 Associates, and 50 Students.

The following lectures were given:—

AT PLYMOUTH.

"Law of Hire-Purchase and Modern Finance," by Mr. Arthur Goldberg, LL.B., Solicitor.
"Debentures and the Powers and Duties of Receivers appointed by the Debenture Holders," by Mr. P. H. Walker, F.S.A.A.
"Public Issue Procedure," by Mr. W. J. Back, A.S.A.A.
"Executorship Law and Accounts," by Mr. E. Westby-Nunn, B.A., LL.B.
Mock Shareholders' Meeting.
"Some Light on the Finance of Gas Undertakings," by Mr. G. H. Bolton, F.C.I.S.
"Income Tax in Relation to Partnership," by Mr. L. B. Barford, Inspector of Taxes.

AT EXETER.

"Debentures and the Powers and Duties of Receivers appointed by the Debenture Holders," by Mr. P. H. Walker, F.S.A.A.
"Reliefs in Connection with Changes in Ownership of Business and New Businesses," by Mr. C. T. Walters, Inspector of Taxes.

At the Examinations of the Society, held in 1936, nine students passed the Final and seven the Intermediate.

Mr. W. W. Beer, Mr. W. S. Burgess, Mr. J. H. Chown, and Mr. G. E. L. Whitmarsh retire under Rule 5 (b). They are eligible, and, with the exception of Mr. Beer, offer themselves for re-election.

Scottish Notes.

[FROM OUR CORRESPONDENT.]

Glasgow Students' Society.

The closing meeting of the session was held in the Scottish Constitutional Club, Glasgow, on 14th ult. Mr. W. Davidson Hall, F.S.A.A., President of the Students' Society, presided over a large attendance of students, and was supported by Mr. Frederick D. Greenhill, C.A., Mr. James Paterson, F.S.A.A., Secretary of the Scottish Branch, Mr. Edwin H. Harris, A.S.A.A., Mr. Thomas Tinto, A.S.A.A., Mr. J. M. Wainwright, and Mr. J. Hawthorne Paterson, F.S.A.A., Hon. Secretary of the Students' Society. The meeting partook partly of a social nature.

Mr. Greenhill, in addition to reviewing the general principles of auditing, referred to special audits such as Local Authorities, Building Societies, and audits under the Industrial and Provident Societies Acts. He dealt with the subject from an examinational point of view, and advised the students on various points which might arise from questions on Auditing and Accounts set at the examinations.

On the invitation of the Secretary, a number of papers had been sent in by students on the subject of "Apportionment on the Purchase and Sale of Investments," and these had been adjudicated by Mr. Greenhill, who reported that the papers displayed a considerable amount of knowledge of the subject, and two had shown special merit. One of the candidates dealt with the subject of Apportionment according to English law and practice, and the differences between Scots and English law and practice were explained by the lecturer. The two best papers sent in were by Mr. John A. Stewart, clerk to Messrs. Wm. H. Jack & Co., Incorporated Accountants, Glasgow, and Mr. George A. MacDonald, articled clerk to Mr. Thomas E. Niven, F.S.A.A., Glasgow.

Mr. James Paterson stated that, with the approval of Mr. Davidson Hall, he had arranged for two book prizes to be given from the W. D. Hall Prize Fund, and these were duly presented to the candidates by Mr. Davidson Hall, who congratulated the recipients on their success. He stated that it had given him great pleasure to set aside a small sum yearly for the Prize Fund, and he hoped it would be taken advantage of, not only for prizes to Scottish candidates in the honours list, but for purposes such as they had been awarding that evening.

After remarks by Mr. E. H. Harris, Mr. James Paterson moved votes of thanks to the lecturer and to Mr. Davidson Hall, which were cordially given.

Fusion of Secretaries' Organisations.

On April 1st the Chartered Institute of Secretaries and the Incorporated Secretaries' Association became one body, and this date coincided with a visit to Glasgow of the President of the Institute, Lieut.-Colonel Tristram Harper, and Mr. C. H. Isdell-Carpenter, Secretary of the Institute. They were entertained to luncheon in the Gordon Restaurant, and Mr. Ernest Coleman, F.C.I.S.,

Vice-Chairman of the Glasgow Branch, presided over a large company of members, and was supported by Mr. James Paterson, F.S.A.A., and Mr. J. Cradock Walker, F.S.A.A., Secretary of the Glasgow and West of Scotland Branch of the Chartered Secretaries.

Colonel Harper said it was difficult to speak of business to-day without speaking of politics. He felt, however, that their profession—the administration and organisation of bodies—made them realise the importance of avoiding extremes in either direction. Their training as secretaries made them feel that they had succeeded to a wonderful heritage of freedom which they could not find in any other large country to-day, and they would be wise to protect their freedom and their democratic institutions, and refuse to be drawn aside by those idealistic factions which they saw carried to such lengths in other countries.

Modern Statute and Case Law.

Presiding at the 114th annual dinner of the Edinburgh University Scots Law Society recently, Mr. J. S. C. Reid, K.C., the Solicitor-General, referred to the work of the society, which consisted largely in discussion of recent cases decided in the Court of Session and House of Lords. He said that the society had been founded in an age of great lawyers, and referred to Lord Stair as the greatest lawyer these islands had produced. He hoped that in the future a member of the society might emulate Lord Stair, and reduce to order the "impenetrable jungle" of modern statute and case law.

Notes on Legal Cases.

COMPANY LAW.

In re Waxed-Papers, Limited.

Scheme of Arrangement.

A proxy was given by a shareholder to the chairman of a meeting of a company empowering him to act for the shareholder at the meeting which was to be held for the purpose of considering and, if thought fit, approving, with or without modification, a proposed scheme of arrangement.

It was held that the power of voting conferred on the holder of the proxy was not confined to that of voting for or against the scheme, but was wide enough to enable him to use the proxy for the purpose of voting on any incidental matter which might arise before the main question for which the meeting was convened was considered; and that it could therefore be used for the purpose of voting on a resolution to defer the consideration of the scheme to a future occasion.

(Ch.; (1937) 53 T.L.R., 455.)

In re Mortimers (London), Limited.

Remuneration of Voluntary Liquidator.

The remuneration of a voluntary liquidator was fixed at a general meeting of a company. Subsequently an order was made for the compulsory winding-up of the company.

It was held that under Rule 192 (1) of the Companies (Winding-up) Rules, 1929, the Court was enabled, when a voluntary liquidation was superseded by a compulsory liquidation, to review the amount of remuneration previously awarded by the members to the voluntary liquidator.

(Ch.; (1937) 53 T.L.R., 493.)

EXECUTORSHIP LAW AND TRUSTS.

Midland Bank Executor and Trustee Company v. Yarner's Coffee, Limited.

"I forgive and release all sums owing to me."

By his will a testator declared: "I forgive and release to any person indebted to me all sums owing to me by them except such sums as shall be secured to me by mortgages or legal charges." At the time of the death of the testator there was owing to him an unsecured sum of £300 which he had lent to a company in which he was a shareholder in answer to a circular sent out to all the shareholders inviting them to subscribe to a loan.

It was held that the words "forgive and release" were not confined to debts resulting from loans made merely in a friendly way and that they therefore operated to put an end to the indebtedness of the company to the testator. But *semble* the words were not wide enough to extinguish the debt owed to the testator by his bank in respect of money held to his credit on current or deposit account, or to a debt owed to a business which the testator conducted.

(Ch.; (1937) 53 T.L.R., 403.)

REVENUE.

National Mortgage and Agency Company of New Zealand v. Commissioners of Inland Revenue.

Dominion Income Tax.

In determining what relief from United Kingdom income tax should be granted in any year under sect. 27 (1) of the Finance Act, 1920, in respect of the profits of a business carried on in a Dominion by a company controlled in the United Kingdom, the assessable income in the two countries in respect of the profits of the business should be ascertained and, without regard to allowances or deductions of expenses permitted in either country in making the assessment, relief should be granted to the extent of the smaller of the two sums as being the amount subjected to double taxation.

By the law of New Zealand a deduction was allowed from the assessable income of a company which had issued debentures for the interest on so much of the debenture capital as had been employed in the production of assessable income, but the company was assessed as agent in that country for its debenture holders in respect of the debenture interest paid there. No deduction was allowed from the assessable income in the United Kingdom in respect of income applied in paying debenture interest.

It was held by the Court of Appeal that the company was entitled to relief from United Kingdom income tax in respect of the debenture interest paid in New Zealand although the New Zealand tax was only paid by the company as agent for the debenture holders.

(C.A.; (1937) 53 T.L.R., 423.)

Rhokana Corporation Limited v. Inland Revenue Commissioners.

Conversion of Foreign Currency.

By virtue of an option contained in debentures issued by an English company principal and interest were payable in sterling in London, in dollars in New York, or Dutch florins in Amsterdam. The interest was subject to income tax under Schedule D. In September, 1931, England went off the gold standard and holders accordingly found it more profitable to exercise their dollar option. For payment of the interest due in December, 1931, by far the greatest proportion of the warrants were presented and paid in dollars in New York at the contract rate of 4.86 to the £ sterling. The warrants were for the net amount due shown in sterling, but with a clause setting out the dollar and guilder option. As the actual rate of exchange at that time was 3.89 to the £ sterling, the payments made, when converted back into sterling, represented a much larger sum in sterling than appeared in the sterling sum set out on the face of the warrants, on which sum a first assessment on the company was based. An additional assessment was made on the company in a sum representing the difference between the actual value in sterling of the currency payments and the total sterling of the currency payments and the total sterling amounts shown on the warrants.

It was held that Rule 21 of the General Rules applicable to all schedules of the Income Tax Act, 1918, which related to payment of any interest of money charged with tax under Schedule D, was not limited to payments made in the United Kingdom; that the rule applied to the interest payments in dollars made in New York; that the additional assessment was rightly made; and that the relevant date for conversion from dollars into sterling was not when the debenture interest fell due, but the date of the actual payments.

(C.A.; (1937) 53 T.L.R., 494.)

Walter Holman

Incorporated Accountants' Hall Floodlighted for the Coronation.